10-21-2016

# Exhibits 12-23 from S. Strack

Steven W. Strack
*Deputy Attorney General, State of Idaho*

# Exhibit 12

to

Affidavit of Steven W. Strack

accompanying

State of Idaho's Memorandum in Support of
Motion for Summary Judgment

CSRBA Consolidated Subcase No. 91-7755

# THE

# STATUTES AT LARGE

OF THE

# UNITED STATES OF AMERICA,

FROM

DECEMBER, 1889, TO MARCH, 1891,

AND

RECENT TREATIES, CONVENTIONS, AND EXECUTIVE PROCLAMATIONS.

---

EDITED, PRINTED, AND PUBLISHED BY AUTHORITY OF
CONGRESS, UNDER THE DIRECTION OF
THE SECRETARY OF STATE.

---

## VOL. XXVI.

---

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1891.

hundred and eighty-seven, and now on file in the Interior Department, is hereby accepted, ratified, and confirmed and is in the following words, to-wit:

AGREEMENT WITH CŒUR D'ALENE. Agreement.

This agreement made pursuant to an item in the act of Congress entitled "An act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the year ending June thirtieth, eighteen hundred and eighty-seven, and for other purposes," approved May fifteenth, eighteen hundred and eighty-six, by John V. Wright, Jared W. Daniels, and Henry W. Andrews, duly appointed commissioners on the part of the United States and the Cœur d'Alene tribe of Indians now residing on the Cœur d'Alene Reservation, in the Territory of Idaho, by their chiefs, headmen, and other male adults, whose names are hereunto subscribed, they being duly authorized to act in the premises, witnesseth: *Post*, p. 1030.

ARTICLE 1. ARTICLE 1.

Whereas said Cœur d'Alene Indians were formerly possessed of a large and valuable tract of land lying in the Territories of Washington, Idaho, and Montana, and whereas said Indians have never ceded the same to the United States, but the same, with the exception of the present Cœur d'Alene Reservation, is held by the United States and settlers and owners deriving title from the United States, and whereas said Indians have received no compensation for said land from the United States: Therefore, Preamble.

ARTICLE 2. ARTICLE 2.

For the consideration hereinafter stated the said Cœur d'Alene Indians hereby cede, grant, relinquish, and quitclaim to the United States all right, title, and claim which they now have, or ever had, to all lands in said Territories and elsewhere, except the portion of land within the boundaries of their present reservation in the Territory of Idaho, known as the Cœur d'Alene Reservation. Lands ceded.

ARTICLE 3. ARTICLE 3.

The said Cœur d'Alene Indians agree and consent that the Upper and Middle bands of Spokane Indians residing in and around Spokane Falls, in the Territory of Washington, may be removed to the Cœur d'Alene Reservation and settled thereon in permanent homes on the terms and conditions contained in an agreement made and entered into by and between John V. Wright, Jared W. Daniels, and Henry W. Andrews, commissioners on the part of the United States and said Spokane Indians, concluded on the fifteenth day of March, eighteen hundred and eighty-seven, at Spokane Falls, in the Territory of Washington. Consent to settlement of Spokanes.

ARTICLE 4. ARTICLE 4.

And it is further agreed that the tribe or band of Indians known as Calespels, now residing in the Calespel Valley, Washington Territory, and any other bands of non-reservation Indians now belonging to the Colville Indian Agency, may be removed to the Cœur d'Alene Reservation by the United States, on such terms as may be mutually agreed on by the United States and any such tribes or bands. Consent to settlement of Calespels and other Indians.

ARTICLE 5.

ARTICLE 5.

Cœur d'Alene Reservation to remain Indian land.

In consideration of the foregoing cession and agreements, it is agreed that the Cœur d'Alene Reservation shall be held forever as Indian land and as homes for the Cœur d'Alene Indians, now residing on said reservation, and the Spokane or other Indians who may be removed to said reservation under this agreement, and their posterity: and no part of said reservation shall ever be sold, occupied, open to white settlement, or otherwise disposed of without the consent of the Indians residing on said reservation.

ARTICLE 6.

ARTICLE 6.

Payment to Cœur d'Alenes.

Distribution.

Mill.

Articles.

And it is further agreed that the United States will expend for the benefit of said Cœur d'Alene Indians the sum of one hundred and fifty thousand dollars, to be expended under the direction of the Secretary of the Interior, as follows: For the first year, thirty thousand dollars, and for each succeeding year for fifteen years, eight thousand dollars. As soon as possible after the ratification of this agreement by Congress, there shall be erected on said reservation a saw and grist mill, to be operated by steam, and an engineer and miller employed, the expenses of building said mill and paying the engineer and miller to be paid out of the funds herein provided. The remaining portion of said thirty thousand dollars, if any, and the other annual payments shall be expended in the purchase of such useful and necessary articles as shall best promote the progress, comfort, improvement, education, and civilization of said Cœur d'Alene Indians, parties hereto.

ARTICLE 7.

ARTICLE 7.

Cash payments instead of articles.

It is further agreed that if it shall appear to the satisfaction of the Secretary of the Interior that in any year in which payments are to be made as herein provided said Cœur d'Alene Indians are supplied with such useful and necessary articles and do not need the same, and that they will judiciously use the money, then said payment shall be made to them in cash.

ARTICLE 8.

ARTICLE 8.

Balances.

It is further agreed that any money which shall not be used in the purchase of such necessary articles or paid over, as provided in article seven, shall be placed in the Treasury of the United States to the credit of the said Cœur d'Alene Indians, parties hereto, and expended for their benefit, or paid over to them, as provided in the foregoing articles.

ARTICLE 9.

ARTICLE 9.

Selection of articles.

It is further agreed that in the purchase for distribution of said articles for the benefit of said Indians the wishes of said Indians shall be consulted as to what useful articles they may need, or whether they need any at all, and their wishes shall govern as far as it is just and proper.

ARTICLE 10.

ARTICLE 10.

Employment of Indians.

It is further agreed that in the employment of engineers, millers, mechanics, and laborers of every kind, preference shall be given in all cases to Indians, parties hereto, qualified to perform the work and labor, and it shall be the duty of all millers, engineers, and mechanics to teach all Indians placed under their charge their trades and vocations.

ARTICLE 11. ARTICLE 11.

Physician, blacksmith, and carpenter.

It is further agreed that in addition to the amount heretofore provided for the benefit of said Cœur d'Alene Indians the United States, at its own expense, will furnish and employ for the benefit of said Indians on said reservation a competent physician, medicines, a blacksmith, and carpenter.

ARTICLE 12. ARTICLE 12.

Marriages with white men.

In order to protect the morals and property of the Indians, parties hereto, no female of the Cœur d'Alene tribe shall be allowed to marry any white man unless, before said marriage is solemnized, said white man shall give such evidence of his character for morality and industry as shall satisfy the agent in charge, the minister in charge, and the chief of the tribe that he is a fit person to reside among the Indians; and it is further agreed that Stephen E. Liberty, Joseph Peavy, Patrick Nixon, and Julien Boutelier, white men who have married Indian women and with their families reside on the Cœur d'Alene Reservation, are permitted to remain thereon, they being subject, however, to all laws, rules, and regulations of the Commissioner of Indian Affairs applicable to Indian reservations.

ARTICLE 13. ARTICLE 13.

Lands for De Smet Mission.

It is further agreed and understood that in consideration of the amount expended in buildings and other improvements on said Cœur d'Alene Reservation for religious and educational purposes by the De Smet Mission, and valuable services in the education and moral training of children on said reservation, and in consideration that the Indians, parties hereto, have donated for said purposes one section of land on which is situated the boys' school, one section on which is situated the girl's school, and one section of timbered land for use of the schools, that said De Smet Mission and its successors may continue to hold and use said three sections of land and the buildings and improvements thereon so long as the same shall be used by said De Smet Mission and its successors for religious and educational purposes.

ARTICLE 14. ARTICLE 14.

Effect.

This agreement shall not be binding on either party until ratified by Congress.

Signatures.

In testimony whereof the said John V. Wright, Jared W. Daniels, and Henry W. Andrews, on the part of the United States, and the chiefs, headmen, and other adult Indians, on the part of the Indians, parties hereto, have hereunto set their hands and affixed their seals.

Done at De Smet Mission on the Cœur d'Alene Reservation, in the Territory of Idaho, on this the twenty-sixth day of March, in the year of our Lord one thousand eight hundred and eighty-nine.

Agreement with Cœur d'Alenes ratified.

SEC. 20. That the following agreement entered into with the said Cœur d'Alene Indians by Benjamin Simpson, John H. Shupe, and Napoleon B. Humphrey, Commissioners on the part of the United States, signed by said Commissioners and by said Andrew Seltice, Chief, and others, on the part of said Indians, which agreement bears date September ninth, eighteen hundred and eighty-nine, and is now on file in the Interior Department, is hereby accepted, ratified, and confirmed, and is in the following words, to wit:

AGREEMENT. Agreement.

Vol. 25, p. 1002.

This agreement, made pursuant to an item of an Act of Congress, namely; Section 4 of the Indian appropriation act, approved March

two, eighteen hundred and eighty-nine, (25 Stat., 1002), by Benjamin Simpson, John H. Shupe, and Napoleon B. Humphrey, duly appointed commissioners on the part of the United States, parties of the first part, and the Cœur d'Alene tribe of Indians, now residing on the Cœur d'Alene Reservation in the Territory of Idaho, by their chiefs, headmen, and other male adults whose names are hereunto subscribed, parties of the second part witnesseth:

ARTICLE 1.

ARTICLE 1.

*Lands on reservation ceded.*

For the consideration hereinafter named the said Cœur d'Alene Indians hereby cede, grant, relinquish, and quitclaim to the United States, all the right, title, and claim which they now have, or ever had, to the following-described portion of their reservation, to wit:

Description.

Beginning at the northeast corner of the said reservation, thence running along the north boundary line north sixty-seven degrees twenty-nine minutes west to the head of the Spokane River; thence down the Spokane River to the northwest boundary corner of the said reservation; thence south along the Washington Territory line twelve miles; thence due east to the west shore of the Cœur d'Alene Lake; thence southerly along the west shore of said lake to a point due west of the mouth of the Cœur d'Alene River where it empties into the said lake; thence in a due east line until it intersects with the eastern boundary line of the said reservation; thence northerly along the said east boundary line to the place of beginning.

ARTICLE 2.

ARTICLE 2.

Money payment.

And it is further agreed, in consideration of the above, that the United States will pay to the said Cœur d'Alene tribe of Indians the sum of five hundred thousand dollars, the same to be paid to the said Cœur d'Alene tribe of Indians upon the completion of all the provisions of this agreement.

ARTICLE 3.

ARTICLE 3.

To be paid pro rata.

It is further agreed that the payment of money aforesaid shall be made to the said tribe of Indians pro rata or share and share alike for each and every member of the said tribe as recognized by said tribe now living on said reservation.

ARTICLE 4.

ARTICLE 4.

Dependent on ratification of former agreement.

It is further agreed and understood that this agreement shall not be binding on either party until the former agreement now existing between the United States by the duly-appointed commissioners and the said Cœur d'Alene tribe of Indians, bearing date March twenty-sixth, eighteen hundred and eighty-seven, shall be duly ratified by Congress; and in the event of the ratification of the aforesaid agreement of March twenty-sixth, eighteen hundred and eighty-seven, then this agreement to be and remain in full force and effect but not binding on either party until ratified by Congress. In witness whereof the said Benjamin Simpson, John H. Shupe, and Napoleon B. Humphrey, on the part of the United States, and the chiefs, headmen, and other adult male Indians, on the part of the Indians, parties hereto, have hereunto set their hands and affixed their seals.

*Ante*, p. 1027.

Signatures.

Done at De Smet Mission, on the Cœur d'Alene Reservation, in the Territory of Idaho, this the 9th day of September, in the year of our Lord one thousand eight hundred and eighty-nine.

Payment to Cœur d'Alenes.

SEC. 21. That for the purpose of carrying into effect the provisions of said two agreements with said Cœur d'Alene Indians there are hereby appropriated, out of any moneys in the Treasury not

otherwise appropriated, in the manner and for the purpose as hereinafter specifically stated the following sums, to wit: For the first installment of one hundred and fifty thousand dollars, as provided for in article six of the first of said agreements, thirty thousand dollars, to be expended for the building and erection on said Cœur d'Alene Indian Reservation of a saw and grist mill, to be operated by steam, and for the payment of the wages of the engineer and miller to be employed in said mill, respectively, the remaining portion of said thirty thousand dollars, if any, to be expended in the purchase of such useful and necessary articles as shall best promote the progress, comfort, improvement, education, and civilization of said Cœur d' Alene Indians, all of said articles to be purchased, and said engineer and miller to be employed as near as may be in strict conformity with articles nine and ten of the first of said agreements. And for the purpose of meeting the requirements of articles two and three of the second agreement aforesaid the sum of five hundred thousand dollars is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, to be paid by the United States to the said Cœur d'Alene tribe of Indians upon their compliance with all the provisions of the said second agreement hereinbefore recited, the same to be paid to the said tribe of Indians pro rata, or share and share alike, for each and every member of the said tribe as recognized by said tribe now living on said reservation.

Division.

Mill.

Necessary articles.

*Ante*, p. 1028.

Pro rata payment.

*Ante*, p. 1027.

SECTION 22. That all lands so sold and released to the United States, as recited or described in both of said agreements, and not heretofore granted or reserved from entry or location, shall, on the passage of this act, be restored to the public domain, and shall be disposed of by the United States to actual settlers only, under the provisions of the homestead law, except section twenty-three hundred and one of the Revised Statutes of the United States, which shall not apply, and under the law relative to town sites or to locators or purchasers under the mineral laws of the United States: *Provided*, That each settler or purchaser under and in accordance with the provisions of said homestead act, shall pay to the United States, for the land so taken by him, in addition to the fees provided by law, and within five years from the date of the first original entry, the sum of one dollar and fifty cents per acre, one-half of which shall be paid within two years; but the rights of honorably discharged Union soldiers and sailors, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes of the United States shall not be abridged, except as to the said sum to be paid as aforesaid: *Provided further*, That the Secretary of the Interior shall cause to be surveyed for and patented to Frederick Post, upon his making final proof of all thereof before the register and receiver of the proper United States land office, and to the satisfaction of the Commissioner of the General Land Office and Secretary of the Interior, and paying therefor two dollars and fifty cents per acre and the cost of making such survey of such portion of said reservation as is recited in the agreement in word and figures as follows, to wit:

Ceded lands open to homestead entry only.

R. S., sec. 2301, p. 421.

*Provisos.*

Additional payment.

Soldiers and sailors.

R. S., secs. 2304, 2305, p. 422.

Patent to Frederick Post.

Payment.

"Know all men by these presents that I. Andrew Seltice chief of the Cœur d'Alene Indians, did on the first day of June, A. D. eighteen hundred and seventy-one, with the consent of my people, when the country on both sides of the Spokane River belonged to me and my people, for a valuable consideration sell to Frederick Post the place now known as Post Falls, in Kootenai County, Idaho, to improve and use the same (water-power); said sale included all three of the river channels and islands, with enough land on the north and south shores for water-power and improvements; and have always protected the said Frederick Post, for eighteen years, in the rights there and then conveyed, and he has always done right with me and my people. We, the chiefs of the Cœur

Agreement.

Description.

d'Alenes, have signed articles of agreement with the Government to sell the portion of the reservation joining Post Falls, in which we have excepted the above-prescribed rights, before conveyed to Frederick Post, and no Indian and no white man except Frederick Post have any rights on the above-described lands and river channels; the said Frederick Post has fulfilled all of his agreements with me and my people by improving the water-power and building mills at great expense, and I hereby authorize him to build a house and take full possession of the above-described lands on the reservation side, so that when the treaty is confirmed he may have full possession and protection of the Government in the same.

"Given under my hand and seal this 16th day of Sept'r., A. D. 1889.

"ANDREW his X mark SELTICE.

Agreement with Indians at Fort Berthold Agency.

SEC. 23. The following agreement, entered into on behalf of the United States, by John V. Wright, Jared W. Daniels, and Charles F. Larrabee, Commissioners, on December fourteenth, eighteen hundred and eighty-six, with the Indians of the Fort Berthold Agency, North Dakota, and now on file in the Interior Department, signed by said Commissioners on the part of the United States and by Pades-a-hish and others on the part of the Gros Ventres; and by Woka-se and others for the Mandans and Kun-nukh-to-wite and others on the part of the Arickarees, and is in the following words, to wit:

Agreement.

"This agreement made pursuant to an item in the act of Congress entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes for the year ending June thirtieth, eighteen hundred and eighty-seven, and for other purposes," approved May fifteenth, eighteen hundred and eighty-six, by John V. Wright, Jared W. Daniels, and Charles F. Larrabee, duly appointed commissioners on the part of the United States, and the Arickaree, Gros Ventre, and Mandan tribes of Indians, now residing on the Fort Berthold Reservation, in the Territory of Dakota, by the chiefs, head-men, and principal men, embracing a majority

Preamble.

of all the adult male members of said tribes, Witnesseth that whereas it is the policy of the Government to reduce to proper size existing reservations when entirely out of proportion to the number of Indians existing thereon, with the consent of the Indians, and upon just and fair terms; and whereas the Indians of the several tribes, parties hereto, have vastly more land in their present reservation than they need or will ever make use of, and are desirous of disposing of a portion thereof in order to obtain the means necessary to enable them to become wholly self-supporting by the cultivation of the soil and other pursuits of husbandry:

Therefore, it is hereby agreed and covenanted by the parties to this instrument, as follows:

ARTICLE I.

ARTICLE I.

Lands ceded.

The Arickaree, Gros Ventre, and Mandan tribes of Indians, parties hereto, hereby cede, sell, and relinquish to the United States all their right, title, and interest in and to all that portion of the Fort

Description.

Berthold Reservation, as laid down upon the official map of the Territory of Dakota, published by the General Land Office in the year eighteen hundred and eighty-five, lying north of the forty-eighth parallel of north latitude, and also all that portion lying west of a north and south line six miles west of the most westerly point of the big bend of the Missouri River, south of the forty-eighth parallel of north latitude.

# Exhibit 13

to

Affidavit of Steven W. Strack

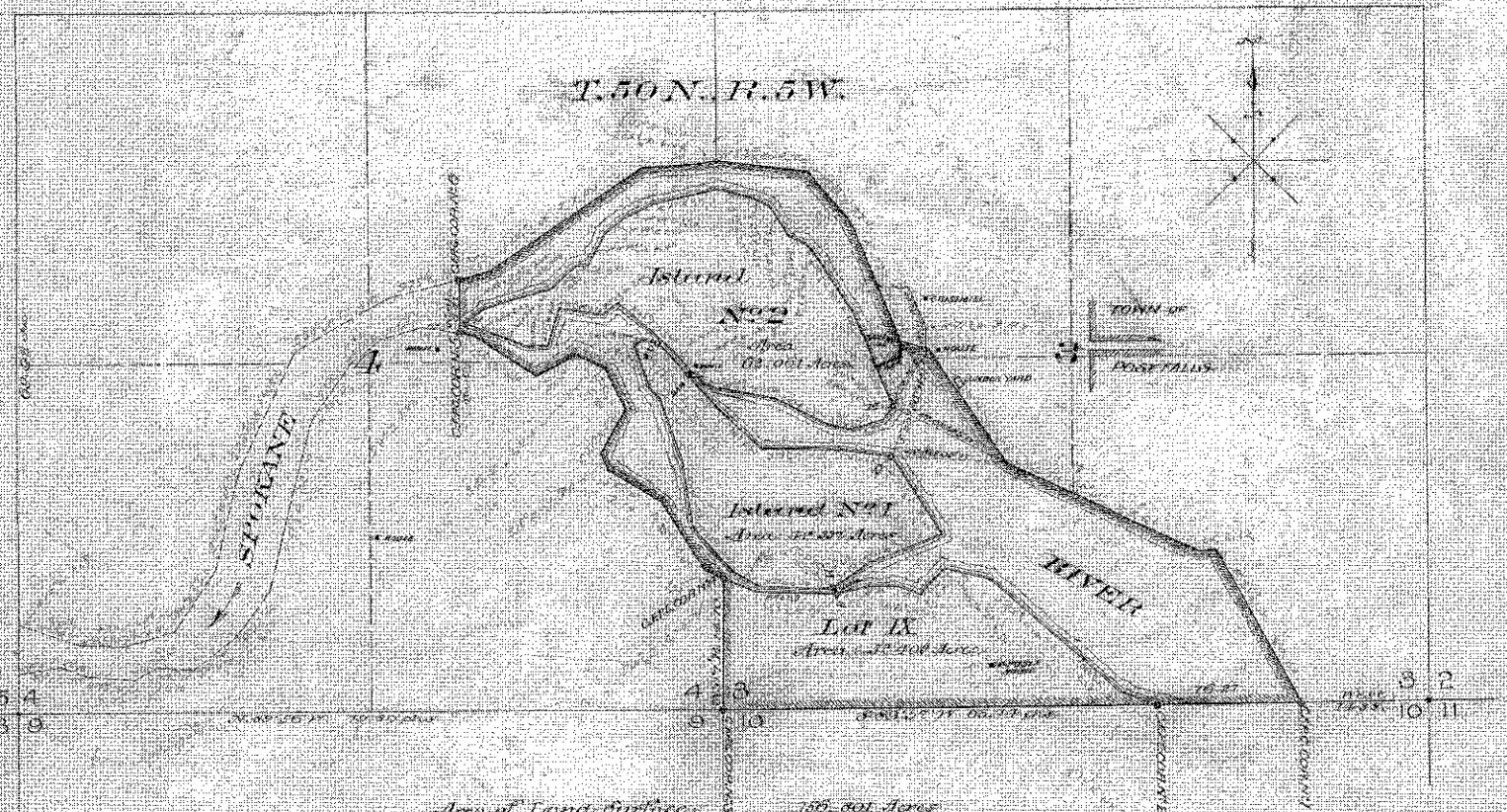
accompanying

State of Idaho's Memorandum in Support of
Motion for Summary Judgment

CSRBA Consolidated Subcase No. 91-7755

# PLAT
OF THE
# Confirmed Claim of Frederick Post
in
# T. 50 N. R. 5 W. Boise Mer.

Surveyed November 20th 1901 and May 2nd 1902. Scale: 10 chains = 1 inch. by W. Clayton Miller U.S. Dep. Surv.




| | | |
|---|---|---|
| Area of Land Surface | | 189.801 Acres |
| Water | | 121.302 " |
| Total Area of Claim | | 208.297 Acres |

The above Plat of the Confirmed Claim of Frederick Post in Township N. 50 North, Range N. 5 West of the Boise Meridian, was surveyed by W. Clayton Miller U.S. Deputy Surveyor under the acceptable special Instructions embodied in his Contract No. 329, dated June 19th 1901, and in pursuance of directions contained in letter "H" of the Commissioner of the General Land Office, dated May 29th 1901, is strictly conformable to the field notes of the survey thereof on file in this Office, which have been examined and approved.

U.S. Surveyor General's Office
Boise City, Idaho, September 8th 1902.

Joseph A. Scoggin
U.S. Surveyor General for Idaho

# Exhibit 14

to

Affidavit of Steven W. Strack

accompanying

State of Idaho's Memorandum in Support of
Motion for Summary Judgment

CSRBA Consolidated Subcase No. 91-7755

53D CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { Ex. Doc. No. 158.

AGREEMENT WITH CŒUR D'ALENE INDIANS.

# LETTER

FROM

# THE SECRETARY OF THE INTERIOR,

TRANSMITTING

*An agreement with the Cœur d'Alene Indians in Idaho, for a change of the northern boundary line of their reservation.*

MARCH 23, 1894.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
*Washington, March 22, 1894.*

SIR: I have the honor to transmit herewith an agreement with the Cœur d'Alene Indians in Idaho for a change in the northern boundary line of their reservation so as to exclude therefrom a strip of land on which the town of Harrison and numerous settlers are located.

This agreement was negotiated in pursuance of a clause contained in the Indian appropriation act for the fiscal year 1894 (27 Stats., 616). It has been considered by the Commissioner of Indian Affairs and the Commissioner of the General Land Office, as shown by the reports herewith, dated 27th ultimo and 14th instant, respectively.

I also transmit herewith a draft of a bill to ratify the agreement, with request that the same may receive the favorable action of Congress.

Very respectfully,

HOKE SMITH,
*Secretary.*

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
*Washington, February 27, 1894.*

SIR: Referring to the correspondence relative to negotiating with the Cœur d'Alene Indians of Idaho for a change in the northern boundary line of their reservation, so as to exclude therefrom a strip of land on which the town of Harrison and numerous settlers are located, in

accordance with the provisions of an item in the Indian appropriation act for fiscal year ending June 30, 1894 (27 Stats., 610), I have now to inform you that under date of December 21, 1893, this office instructed Special U. S. Indian Agent John Lane in the matter of negotiating with said Indians, in accordance with Department instructions of December 15, 1893.

For your further information in the premises I inclose you herewith a copy (in duplicate) of said letter of instructions. It gives a brief history of the legal status of the Cœur d'Alene reservation; the circumstances under which it is claimed the town of Harrison was settled; the unsuccessful efforts heretofore made at negotiating with the Indians for a cession of said lands; and full instructions to the special agent with reference to conducting said negotiations.

I am now in receipt of Special Agent Lane's report in connection with said negotiations, dated February 10, 1894. The special agent states that he arrived at De Smet Mission, on the reservation, on February 2, 1894; that he at once sent for Chief Seltice, Wild Shoes, and Mac tel ma, and advised them of the object of his visit; that arrangements were made for convening a general council of the tribe on Tuesday, February 6; that in accordance with this arrangement he met the council on the evening of February 6, there being a large number of Indians present; that it was soon apparent to him, after opening the council, that the Indians would not agree to the cession of the lands in question without pay therefor; that after the matter was fully explained to the Indians, they desired an adjournment until next morning, in order that they might talk it over among themselves; that the council then adjourned to meet next morning at 9 a. m.; that the council met on the morning of February 7, pursuant to adjournment; that shortly after convening, the Indians informed him they would cede a strip of land entirely across the reservation, a mile in width, so as to include the town of Harrison and the settlers on the northern part of the reservation, for the consideration of $15,000, to be paid to them per capita, share and share alike. This proposition Special Agent Lane accepted, and the agreement was drawn accordingly, dated February 7, 1894.

The agreement also provides that the new boundary line established thereby shall be surveyed and marked in a plain substantial manner, the cost of such survey to be paid by the United States; also that the agreement shall not be binding on either party until the same is ratified by Congress.

Special Agent Lane further states in his report, that from the best information obtainable there are about 141 adult male Indians residing on the reservation and interested in the cession of the land, and that he obtained 112 such signatures to the agreement.

For your further information I inclose you herewith (in duplicate) a copy of Special Agent Lane's report, a copy of the council proceedings, and a copy of the agreement; and it is respectfully recommended that these papers be placed before the Congress for its consideration and action.

The distance from the month of the Cœur d'Alene River to the eastern boundary of the reservation is about 15 miles; a strip of land a mile wide across the northern part of the reservation from the mouth of the Cœur d'Alene River would therefore embrace about 15 sections. Upon this basis the price agreed upon is about $1.56 per acre. If from this we deduct 1 square mile from the township of Harrison, it would leave about 14 sections, or 8,960 acres; if it be calculated that the townsite alone is worth $5,000, this would make the remainder of the land, at the price agreed upon, cost a little less than $1.12 per acre. It must be understood that the above is but a rough estimate of this office if the northern boundary line of the reservation should fall short of 15 miles in length. This would make the quantity of land less than the above estimate, and the price per acre would be correspondingly higher.



The price agreed upon, taking all the circumstances into consideration, is probably not too large; at any rate, this office feels well assured that it is the least price at which the Indians would consent to part with the lands, and this office accordingly recommends the ratification of the agreement by Congress, and that an appropriation be made for carrying the same into effect.

The disposition that should be made of the lands after they are segregated from the reservation and become a part of the public domain is a question that should probably be determined by the General Land Office; this office suggests, however, that it might be well to give some preference right to the settlers now on said land or to such as were bona fide settlers prior to the making of this agreement, and to require the settlers to reimburse the Government for the price paid the Indians for the lands and for the survey thereof. This suggests also that the question of the survey is one that more properly comes under the jurisdiction of the General Land Office.

I also inclose herewith the draft of a bill to ratify said agreement; but, as has been suggested since, there are questions that should be settled by the General Land Office; the bill is incomplete and should be referred to that office for completion. It is accordingly recommended that the papers be referred to the Commissioner of the General Land Office for consideration and action.

Very respectfully, your obedient servant,

FRANK C. ARMSTRONG,
*Acting Commissioner.*

The HON. SECRETARY OF THE INTERIOR.

---

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
*Washington, December 21, 1893.*

SIR: The Cœur d'Alene Indian Reservation, in Idaho, prior to the agreement hereinafter mentioned, contained about 598,500 acres and was created by Executive orders of the dates of June 14, 1867, and November 8, 1873. On March 3, 1891, Congress ratified an agreement (26 Stats., 1026), which had been made with the Cœur d'Alene Indians by a commission theretofore appointed by the President, consisting of John V. Wright, Jared W. Daniels, and Henry W. Andrews, to treat with them for the cession of a certain portion of their lands, which agreement was made March 26, 1887, article 5 of which provides:

> In consideration of the foregoing cession and agreements it is agreed that the Cœur d'Alene Reservation shall be held forever as Indian land and as homes for the Cœur d'Alene Indians now residing on said reservation, and the Spokane or other Indians who may be removed to said reservation under this agreement, and their posterity; and no part of said reservation shall ever be sold, occupied, open to white settlement, or otherwise disposed of without the consent of the Indians residing on said reservation.

Afterward, on September 9, 1889, pursuant to the act of Congress approved March 2, 1889 (25 Stats., 1002), Benjamin Simpson, John H.

Shupe, and Napoleon B. Humphrey, a duly appointed commission, made a contract with the Indians for a certain other cession of the reservation, the description of which is contained in article 1 of the agreement, and reads as follows:

For the consideration hereinafter named the said Cœur d'Alene Indians hereby cede, grant, relinquish, and quit-claim to the United States all the right, title, and claim which they now have, or ever had, to the following described portion of their reservation, to wit: Beginning at the northeast corner of the said reservation, thence running along the north boundary line north sixty-seven degrees twenty-nine minutes west to the head of the Spokane River; thence down the Spokane River to the northwest boundary corner of the said reservation; thence south along the Washington Territory line 12 miles; thence due east to the west shore of the Cœur d'Alene Lake; thence southerly along the west shore of said lake to a point due west of the mouth of the Cœur d'Alene River, where it empties into the said lake; thence in a due east line until it intersects with the eastern boundary line of the said reservation; thence northerly along the said east boundary line to the place of beginning.

This agreement was ratified by act of Congress approved March 3, 1891 (26 Stats., 1030). The instructions of the Commissioner of the General Land Office to the surveyor-general of Idaho relative to the survey of the line dividing the ceded portion from the retained reservation, followed the exact language or wording of article 1 of said agreement; said line was accordingly located and surveyed from "a point due west of the mouth of the Cœur d'Alene River, where it empties into the said lake (the Cœur d'Alene Lake), thence in a due east line until it intersects with the eastern boundary line of said reservation."

Between the date of the ratification of said agreement (March 3, 1891) and the time of the survey of said boundary line under the directions of the surveyor-general of Idaho, and about the first of July, 1891, certain white persons settled upon what has since been known as and called the town site of Harrison, south of said boundary line and within the reservation, on the east side of Cœur d'Alene Lake, near the mouth of Cœur d'Alene River. These settlers claim that before locating on the town site of Harrison they had been told by the commissioners who negotiated the agreement of cession, and by the Indians, that the line dividing the ceded portion from the reservation would run about a mile and a-half south of where it was actually located by the surveyors, which would have left the said town site on the ceded portion. They also further claim to have settled on said lands under the United States town-site act in accordance with the laws of Idaho. On September 4, 1891, one A. A. Crane, chairman of the committee of relief, wrote to the President requesting that relief of some kind be afforded the town-site settlers.

As a result of the correspondence which followed this letter an item was inserted in the act making appropriations for the current and contingent expenses of the Indian department, and for fulfilling treaty stipulations with various Indian tribes, for the fiscal year ending June 30, 1893, and for other purposes (27 Stats., 124), providing for obtaining the consent of the Cœur d'Alene Indians to the cession of a certain tract of land therein described upon which it was supposed the said town site was located, the cession of which it was believed would give the town-site settlers the relief they desired. This office accordingly, on July 30, 1892, instructed the U. S. Indian agent of the Colville Agency to convene a council of the Cœur d'Alene Indians and obtain their consent to the cession of the lands described in said item. A council of the Indians for the purpose of securing their consent to this session was never called, and the cession was not secured for the reason



as stated by the U. S. Indian agent, in his report on said office instructions of July 30, 1892, that the town site of Harrison was not located on the tract of land described in said item, and that the cession of such tract of land would not give the town-site settlers any relief whatever.

The cession contemplated by said item having failed for the reasons above stated, another item looking to the accomplishment of the same object was inserted in the act making appropriations for current and contingent expenses and fulfilling treaty stipulations with Indian tribes, for fiscal year ending June 30, 1894 (27 Stats., 616). Said item is as follows:

The Secretary of the Interior is hereby directed to negotiate with the Cœur d'Alene Indians for a change of the northern line of their reservation, so as to exclude therefrom a strip of land on which the town of Harrison and numerous settlers are located.

That the foregoing provision shall take effect and be in force after it shall have been submitted to and duly agreed to by the Indians of said tribe and approved by the Secretary of the Interior.

The change of the northern boundary line of the Cœur d'Alene Reservation contemplated by this legislation is such as to exclude from the reservation the land on which the town of Harrison and numerous settlers are located. The change in the boundary line will take effect and be in force after it shall have been submitted to and duly agreed to by the Indians occupying the Cœur d'Alene Reservation and approved by the Secretary of the Interior.

Accordingly, on July 20, 1893, this office submitted to the Secretary of the Interior the draft of a letter of instructions relative to negotiating with the Cœur d'Alene Indians for a change of the northern boundary line of their reservation, as contemplated in the above item of the Indian appropriation act for the fiscal year ending June 30, 1894. On August 11, 1893, this office transmitted Special U. S. Indian Agent Thomas P. Smith and Capt. John W. Bubb, U. S. Army, acting Indian agent, Colville Agency (to which agency the Cœur d'Alene Reservation is attached), copies of the letter of instructions for negotiating with said Indians for the cession of said strip of land, which had received the approval of the Acting Secretary on July 21, 1893, and instructed them to conduct said negotiations as said letter of instructions directed. Afterward, and before the negotiations were commenced, Agent Ronan, of the Flathead Agency, died, and it became necessary to send some one there to take charge of that agency. Accordingly, on August 21, 1893, this office telegraphed Special Agent Smith of the death of Agent Ronan, and directed him to proceed at once to Flathead Reservation and take full charge of the agency. On August 23, 1893, he was directed by telegram, addressed to Flathead Agency, to transmit instructions and accompanying papers relating to the matter of the town site of Harrison, on the Cœur d'Alene Reservation, to Capt. Bubb, of the Colville Agency. He was also informed that the office had wired Capt. Bubb to carry out same in connection with Special Agent Hardman. On the same day Acting Agent Bubb was wired as follows:

Have wired Special Agent Smith to forward to you instructions relating to selection of land within Cœur d'Alene for Spokanes and town of Harrison. Carry out same in connection with Special Agent Hardman, of Spokane.

Accordingly the instructions of July 20, 1893, were carried out by Acting Agent Bubb and Special Agent Hardman.

A council for the purpose of negotiating with the Indians for the said strip of land was called to meet at De Smet Mission on October 26, 1893, at which time and place the council met at 11 a. m. It appears

from the proceedings, which are dated October 28, 1893, that councils were also held on that date and on October 30.

I am now in receipt of a letter from Acting Agent Bubb, dated the 3d instant, with which he forwards said council proceedings.

It appears from the proceedings that the Indians on the first day of the council, after some of the subchiefs had said that they would not agree to the cession of a strip of land entirely across the reservation so as to include the settlers along the river outside of the town site, finally, in an informal manner, and without signing any papers to that effect, agreed to cede a strip of land 1 mile wide across the entire reservation without compensation. The council then adjourned to meet on Saturday, October 28, for the purpose of entering into the formal written agreement, the intervening time being occupied in reducing the first day's proceedings to writing and in drafting the formal written agreement.

The second meeting was at Tekoa, Wash. Chief Seltice at once informed Acting Agent Bubb and Special Agent Hardman that the Indians had changed their minds, and that they would not let the land go for nothing. Acting Agent Bubb stated that if the Indians had changed their minds about the matter, Tekoa was not the proper place to talk about it; that De Smet Mission was the proper place to talk the matter over. He accordingly requested the Indians to meet him at De Smet Mission on Monday, October 30, at 10 o'clock a. m.

The council met at De Smet Mission on October 30, according to appointment. The talk was long and toward the close was somewhat heated. The Indians refused to cede the land for less than $5 per acre for the land outside the town site, and $25 per acre for the land included within the town site. Acting Agent Bubb and Special Agent Hardman were of the opinion that the price was exorbitant, and would not be approved by the Department, and so refused to enter into an agreement with the Indians on that basis.

It appears from the council proceedings that Chief Seltice felt considerable dissatisfaction because "Washington" had not sent him a copy of the letter of instructions directing the negotiations and because their agent had been designated as one of the commissioners to treat with them for the cession of the land.

Acting Agent Bubb, in his letter transmitting the council proceedings, states that he is still of the opinion that the Indians would consent to cede the land without compensation if the Department would write to Chief Seltice and Subchiefs Weld shaw and Mac tel ma. The acting agent also further states that it was apparent to him that he did not have the full confidence of the Indians, and that he is strongly of the opinion the Indians were induced to change their minds in regard to ceding the land, after the first day's council, by parties who enjoy the confidence of the Indians through mercantile channels and long intercourse with them.

I am also in receipt of a communication (without date) signed by a considerable number of the Cœur d'Alene Indians, in which they give their account of the proceedings of the councils held by Acting Agent Bubb and Special Agent Hardman. The burden of this communication is that "Washington" should have written their chief, Seltice, just what "he" wanted them to do. In it they also express some feeling that they were not fairly treated in the matter by Acting Agent Bubb, a feeling that probably amounted to a suspicion that their agent was not fairly carrying out the directions he had received from the Department.



In the closing paragraphs of the council proceedings Acting Agent Bubb and Special Agent Hardman state:

> It has been apparent to us from the first that the Indians did not look upon us as having full power to make a treaty for their land, although we explained fully our instructions and the law under which the instructions were made.

For your further information in the premises, I transmit you herewith a copy of the said letter of instructions of July 20, 1893, a copy of the said council proceedings, a copy of Capt. Bubb's letter transmitting council proceedings, dated November 3, 1893, and a copy of the communication from the Cœur d'Alene Indians.

Under date of November 16, 1893, this office reported to the Department the result of the negotiations conducted by Special Agent Hardman and Capt. Bubb, with which was transmitted a copy of the council proceedings and copies of all the correspondence in relation to the negotiations, and asked to be advised as to what further steps should be taken in the matter. I am now in receipt of the Secretary's reply to said communication, dated December 15, 1893, as follows:

> I am in receipt of your communication of the 16th ultimo, in which you refer to previous correspondence relative to negotiations with the Cœur d'Alene Indians for a change of the northern boundary of that reservation so as to exclude therefrom a strip of land on which the town of Harrison and numerous settlers are located, in accordance with the provisions of the Indian appropriation act for the fiscal year ending June 30, 1894, and transmitting copy of a report of Special Agent Hardman and Capt. John W. Bubb, U. S. Army, acting Indian agent, Colville Agency, showing that the negotiations failed because Capt. Bubb and Special Agent Hardman thought the Indians were asking an exorbitant price for the ceded lands.
>
> It is shown by the correspondence that Capt. Bubb is of the opinion that the Indians would consent to cede the lands without compensation if the Department would write to Chief Seltice and Subchiefs Weld shaw and Mac tel ma, and that it was apparent to him that he did not have the full confidence of the Indians and that he is strongly of the opinion that the Indians were induced to change their minds in regard to ceding the land after the first day's council by parties who enjoy the confidence of the Indians through mercantile channels and long intercourse with them; and further, that the Indians did not look upon them as having full power to make a treaty for their land, although they explained fully their instructions and the law under which the instructions were made.
>
> As it is the wish of the Department that this matter be finally determined, I have to request that you direct U. S. Special Indian Agent John Lane to proceed at as early date as practicable to the Cœur d'Alene Reservation and procure, if possible, from their lands without compensation to conduct the negotiations so that they shall receive a proper and reasonable compensation, subject, however, to the future action of Congress.
>
> Agent Lane should be directed to act in this matter jointly with the agent, Capt. Bubb, or alone, if it is deemed best and Chief Seltice and Subchiefs Weld shaw and Mac tel ma should be notified of the wishes of the Department as to the final settlement of this matter.

You are accordingly directed, after you shall have completed the negotiations with the Indians of the Yakama Nation for the cession of all their rights in and to the land known as the "Wenatshapam fishery," as contemplated in office instructions of October 25, 1893, to proceed to the Cœur d'Alene Reservation, and either jointly with Capt. John W. Bubb, U. S. Army, acting Indian agent, Colville Agency, or alone, as you may deem best, present to the Cœur d'Alene Indians the matter relating to the change of the northern boundary line of their reservation, as contemplated by the above quoted item in the Indian appropriation act for the fiscal year ending June 30, 1894.

A copy of these instructions will be sent to Capt. Bubb, and he will be directed to cooperate with you in the matter of conducting the negotiations in case you deem his assistance necessary. In view, however, of the statement in Capt. Bubb's letter of November 3, 1893, transmitting the former council proceedings, to the effect that it was apparent

to him early in the proceedings that he did not have the confidence of the Indians, it has been thought by this office that you would probably better conduct the negotiations alone, and not call upon Capt. Bubb for assistance. If, however, you deem Capt. Bubb's presence necessary to the successful termination of the negotiations, you should call upon him.

For the purpose of obtaining the consent of the Indians to the change of the northern boundary line of their reservation, as herein contemplated, you will hold open councils with the Indians, to which all the chiefs, headmen, and other male adults 18 years of age and upwards belonging to the reservation shall be invited.

The provisions of law authorizing the negotiations should be carefully read and explained to the Indians, who should be made to clearly understand and comprehend the meaning and intent thereof. Great care should be taken by you in your interviews with the Indians to secure proper and exact interpretations of all communications passing between you.

You will make a complete and accurate report of all your proceedings and of the proceedings of every council held, including all that is said or done by any person present, and the same must be certified by your signatures as correct and submitted with your final report.

In addition to the original written proceedings and report, you will prepare and submit one copy of each, if practicable, in order that the same may be in condition to submit to the Secretary of the Interior.

In case an agreement is effected it should be carefully drawn and executed by all the chiefs, headmen, and other male adults of the tribe occupying the reservation.

In case it is the opinion of yourself and Capt. Bubb (in the event Capt Bubb assists in conducting the negotiations) that it will be necessary to employ a surveyor to enable you to properly determine and describe the change in the northern boundary line of the reservation, as agreed upon between yourselves and the Indians, so as to exclude from the reservation the strip of land on which the town site of Harrison and numerous settlers are located, you are hereby authorized so to do, including such assistants as are necessary in making the survey; said services to be paid for from funds available for that purpose. All such employés, including surveyor, should be reported on your report of irregular employés.

The new location of the boundary line as agreed upon should be carefully described in the agreement entered into between you and the Indians.

Your attention is particularly invited to the fact that the item above quoted makes no appropriation for carrying the same into effect; that is, no provision is made for paying the Indians anything for the change in the northern boundary line of the reservation, as therein contemplated. Touching this point you are informed that the U. S. Senators from Idaho have informally advised that office that it has been represented to them that the Indians will consent to the change of said boundary line without any money or other consideration whatever.

It is presumed that the Senators from Idaho, who secured the above legislation, had quite definite information that the change could be effected without compensation, or they would have secured the insertion of an item carrying with it an appropriation sufficient for this purpose. Moreover, the agent states in his letter of November 12, 1891, in reporting to this office respecting the location of the town site, that the Indians told him if he thought the line was not run right by the



surveyor and more land should have been included in the ceded portion, so as to throw the town of Harrison off the reservation, "it would be all right."

In the letter of instructions of July 20, 1893, it was stated that it was supposed by this office that the contemplated change would not require more than 300 or 400 acres to give the town-site settlers the relief they ask for; but it appears from the former council proceedings that there was no talk of a cession of less amount than a strip of land 1 mile wide across the entire reservation. The said item in the Indian appropriation act authorizing these negotiations, it appears, contemplates a cession of more land than merely that upon which the town of Harrison is located.

If it will require a strip of land 1 mile wide across the entire reservation to give the whites the relief contemplated, then the negotiations should be conducted accordingly; if a less amount of land will suffice, the negotiations should be conducted with a view to securing only the smaller amount. The matter should be carefully presented to the Indians in this light for their consideration and action. In conducting the negotiations the former negotiations and the council proceedings in connection therewith should be constantly kept in mind.

The matter should be fairly and clearly presented to the Indians, and they should be made to definitely understand (as no doubt they already do) that the legislation providing for the change of boundary carries with it no appropriation for paying for the land that may be ceded, and that if the negotiations provide for the payment to them of any sum of money for the cession the agreement would require the ratification of Congress and an appropriation for carrying the same into effect. If, after a full and perfect understanding on the part of the Indians, they consent to the change without compensation, the agreement should be drawn accordingly; if, however, they object to the cession without compensation, negotiations should be conducted looking to the payment to them of a proper and reasonable compensation, subject to the future action of Congress. Any agreement you may enter into with the Indians which carries with it a money consideration must of course be made subject to the ratification of Congress and subject to course be signal appropriation. All this should be fully explained to Congressional appropriation. All this should be made to feel that they may act freely in the matter. Chief Seltice and subchiefs Wehl shaw and Mac tel ma will be notified of the wishes of the Department as to the final settlement of this matter and of the fact that you have been instructed to negotiate with them for the change of the northern boundary line of the reservation, as contemplated in the said item of the Indian appropriation act providing therefor.

For your guidance in the preparation of an agreement, especially with reference to the heading, the signatures, seals, attestations of witnesses, certificate of interpreters, etc., see agreement with certain Indians in Montana ratified by act of May 1, 1888 (Public—No. 73), copy herewith.

Acknowledge receipt.

Very respectfully,

D. M. BROWNING,
*Commissioner.*

JOHN LANE, Esq.,
*Special U. S. Indian Agent, Yakima Agency, Fort Simcoe, Wash.*

UNITED STATES INDIAN SERVICE,
*De Smet Mission, Idaho, February 10, 1894.*

SIR: In obedience to instructions contained in office letter marked "Land 46760-1893," bearing date December 21, 1893, I, upon completion of my work at Yakima Agency (your telegram of the 16th of last month not reaching me until the 26th), started for this place, and arrived here on the 2d of this month, and immediately sent for Chiefs Siltice, Wild Shoes, and Pierre Mac tal ma, and notified them of the object of my visit. We agreed upon Tuesday, the 6th instant, as a convenient day to hold council, as the day following was Ash Wednesday, and nearly all the Indians would be here on the evening of Tuesday to enable them to attend early service the following morning. We accordingly met on Tuesday evening, there being a large number of Indians present. Learning that Father Ward was a shorthand writer, I asked him to take down proceedings of council. He promptly and pleasantly consented to do so. I also selected Paul Polotkan, an Indian, as interpreter.

Before opening council I asked the Indians if they had any objections to Father Ward and Polotkan acting in the above named capacities, and they assured me they had none. I then opened council, and tried to show to these Indians that it was their duty to cede a strip of land on north boundary of reservation, so as to include town site of Harrison and numerous settlers thereon free of charge. I was convinced before I finished talking that I would not succeed; that they wanted pay. Council adjourned to meet next morning at 9 o'clock a. m., the Indians stating they wanted to have a talk among themselves and come to some conclusion. The council met pursuant to adjournment. I told them I was anxious to hear what they had to say. They then informed me that they would take $15,000 for a strip 1 mile wide running across northern portion of reservation and covering town site of Harrison and settlers aforesaid. Being satisfied from information obtained on the outside, and knowing that many white men interested in trading with these Indians were urging them to ask a very high price, telling them the "Government was compelled to have this land, and would eventually pay any price they would hold out for," and also remembering the best terms offered Capt. Bubb was something like $70,000, I deemed it best to close bargain at the figures aforesaid, to-wit, $15,000.

The papers in Spokane and at points nearer to reservation have kept this matter before the public for some time. I was met at Spokane, where I was compelled to remain one night on account of nonconnection of trains, by reporters from all the papers, and other parties, all anxious to give advice and learn my instructions, etc. I was very careful in my replies. I merely mention this in order to give you an idea of the excitement prevailing in regard to the purchase of the Harrison town site and the land occupied by settlers. From best information obtainable there are about 141 male adult Indians residing on this reservation and interested in this sale. We have obtained the signatures of 112 to the agreement. Taking everything into consideration I firmly believe I have made as good a bargain as could have been accomplished.

Hoping you will take the same view, and that my course will meet with your approval,

I am, very respectfully,

JOHN LANE,
*U. S. Special Indian Agent.*

THE COMMISSIONER OF INDIAN AFFAIRS,
*Washington, D. C.*

---

UNITED STATES INDIAN SERVICE.

*De Smet, Idaho, February 6, 1894*—6:30 o'clock p. m.

Col. LANE. Are all satisfied that Paul Paulotkin act as interpreter?
INDIANS. Yes.
Col. LANE. Are all satisfied that T. Ward does the writing?
INDIANS. Yes.

OPENING REMARKS OF COL. LANE.

I am very much pleased with you Indians since my stay here, and your fields, as well as the cultivated condition of your land, have filled me with admiration. It has been my pleasure to visit many reservations, but this one surpasses by far any that I have ever seen for nice homes and beautiful farms. It shows to me also that you have accomplished a greater work and advanced farther in civilization than any tribe of Indians I have ever met. When I visited your church last Sunday I must say that I witnessed more sincere devotion and Christianity than I have seen for many a day. When I saw that amid such a big storm so many people this evening going to church for the purpose of attending service and prayer, I felt then, and I feel now, that I was standing in the presence of as true a party of Christians as I have ever seen in my life. And further, when I see those fathers who are devoting their lives to the education of your children, I feel like taking off my hat and bowing whenever I meet them. The result of their labor may be seen when one beholds your farms and your lands throughout this your beautiful reservation.



I am not here to humbug you or to tell stories that are not true, but before we get down to business I cannot help expressing my sentiments as I feel them within me. Now you people know why I am here. I have been sent by Washington for the purpose of settling this Harrison town site on a part of your reservation. I have been informed also that the chiefs have received letters from Washington fully explaining my visit to them. Before I proceed farther, I wish to remark to you people that Washington is not able to make you sell your land; nor can he force you in any way in this matter. (Here the colonel read from a paper about Harrison having become a town site on the 1st of July, 1891.) The whites got on the reservation, and they are not entirely to be blamed for going so far; hence this trouble with them at present. Now I have been informed that you Indians expressed that if it was known that the whites wanted the land it would have been granted. But I am not sure of this, for I was simply informed of it in the manner in which I told you. Washington has been very liberal to you people; he gave you a large price for your land, and the money was paid in your hand in coin. Washington was informed by the Senators and Members of Congress from the State of Idaho that you people were willing to give a strip of land 12 to 18 miles through the reservation, and that you did not want pay for it.

As I said before, Washington has been very lenient in dealing with your people, as I have been informed since I came here, with regard to the Spokane Indians. I am satisfied that there is no reasonable request that Washington will not grant you Indians, and in return he expects that you will come to his assistance when he asks you. I say that if you would freely and voluntarily grant this piece of land, 1 mile from the line, Washington will appreciate it very much. My instructions are very voluminous, and cover a great many pages; but I have given and explained everything to you.

Washington has given me particular instructions to tell you that he is greatly pleased with your progress. This is all I have to say. I would be pleased, though, to hear from any of the chiefs.

This, you must know, is a mere matter of business, and Washington will feel very pleased with you if you grant him this request.

Chief SELTICE. You know the interview that took place between us Indians and Capt. Bubb?

Col. LANE. Yes [showing the instructions]; I know all about it. It is all here.

Chief SELTICE. You know what we said, and this is the reason why Washington sends you here to straighten up things. Did not Washington tell you in those papers? [Pointing at papers on desk.] Now there are two parties, and the Harrison people are one and the surveyors make up the second. The latter claim that the line is true, and the Harrison people say it is not the true line.

Col. LANE. Washington acknowledges this [pointing on the map] as the true line, and if you Indians grant this it will be a purely voluntary gift on your part. Now, if you will give this land it is not to correct any previous mistake, but simply this: Washington asks it from you.

Chief SELTICE. About this Harrison town site; the first white man that came there came only with the intention to fish.

Col. LANE. Yes, I have been informed with all the particulars relating to that.

Chief SELTICE. Those Harrison people have been petitioning us for a long time about that land, so now we will give them 1 mile square, and the others that are living on that land, we don't want them bothering us; we want them removed.

Col. LANE. If you only give a mile square you will not settle the question; but if you grant that strip running there [pointing on map] you will settle the whole difficulty.

(The Indians are silent.)

Col. LANE. This reservation has lots of land, and this piece of which we are speaking is not of much account, because there are not many people (white) living on it.

Chief SELTICE. We will give to Washington 1 mile square and nothing more.

BAZIL. We want to go and talk this thing over among ourselves.

Col. LANE. I am anxious to settle this, and if you give this piece of land to Washington you will not lose anything by it. Now, I repeat it, the land belongs to you, and if you accede to the proposal of Washington it will be to your interest.

Chief WILDSHOW. I got all my land from Washington and I won't let one tree go for nothing.

Council adjourned to meet again at 9 a. m. to-morrow, February 7, 1894.

Council opened again at 9 a. m., February 7, 1894.

Col. LANE. I informed you Indians last evening what Washington wanted from you, and so I hope that this morning I will have the pleasure of hearing that you have come to some conclusion and grant the request which Washington asks from you. (After the Indians had been silent for some time.) Now I want to hear from some of you.

Chief WILDSHOW. The white people settled not only at Harrison, but also on our land above Harrison, and we Indians all know that. We have known this for a long time, but we felt sure that Washington would soon see about it. Where Harrison now stands was the place where the Indians used to fish. But we will let it go. We have come to this conclusion that we will let them have 1 mile across the boundary of the reservation. We Indians, all of us, can not let our land go for nothing.

(Here the Indians began to talk the matter over among themselves.)

Chief WILDSHOW. We will let that piece of land go for $15,000.

Col. LANE. We will have the papers drawn up and submit them to Washington, and if you will wait here in one hour I will come back and we will fix it all up and have no more trouble. I am glad you have come to a conclusion so soon, and I know that Washington will more than appreciate this. And, furthermore, I do not think there is a man in the United States who would come here and live among you as long as I have without having the kindest feelings for you Cœur d'Alene Indians.

I, John Lane, U. S. Special Indian Agent, hereby certify that I have carefully read the foregoing proceedings of councils held at De Smet Mission, Idaho, on the 6th and 7th of February, 1894, and know the same to be a true and correct statement of said proceedings.

Witness my hand this 9th day of February, 1894, at De Smet Mission, Idaho.

Done in duplicate.

JOHN LANE,
*U. S. Special Indian Agent.*

I, Paul Polatkin, hereby certify that I am a member of the Cœur d'Alene tribe of Indians, and was chosen by said tribe of Indians and also by John Lane, special U. S. Indian agent, as interpreter at the council held by said Indians for the purpose of negotiating a sale for a portion of the Cœur d'Alene Reservation. That I speak and understand well both the English and Cœur d'Alene languages, and can read and write the same. That I faithfully, carefully, and correctly interpreted all the proceedings of said council and also correctly interpreted the agreement entered into by said parties.

Witness my hand at De Smet Mission, this 7th day of February, 1894.

PAUL POLATKIN,
*Interpreter.*

---

*Agreement concluded on the 7th day of February, 1894, between John Lane, special U. S. Indian agent, on the part of the United States, and the Indians of the Cœur d'Alene Reservation in the State of Idaho.*

ARTICLE I.

This agreement made on the 7th day of February, 1894, by John Lane, U. S. special Indian agent, on the part of the United States, and the Cœur d'Alene Indians, residing on the Cœur d'Alene Reservation, in the State of Idaho, by their chiefs, headmen, and principal men, embracing a majority of all the male adult Indians occupying said reservation, pursuant to an item in the act of Congress, making appropriations for current and contingent expenses, and fulfilling treaty stipulations with Indian tribes for the fiscal year ending June 30, 1894, as follows:

"The Secretary of the Interior is hereby directed to negotiate with the Cœur d'Alene Indians for a change of the northern line of their reservation so as to exclude therefrom a strip of land on which the town of Harrison and numerous settlers are located.

"That the foregoing provision shall take effect and be in force, after it shall have been submitted to and agreed to by the Indians of said tribe, and approved by the Secretary of the Interior."

Witnesseth, that the said Indians, for the consideration hereinafter named, do hereby cede, grant, and relinquish to the United States all right, title, and claim which they now have or ever had of, in, and to all the land embraced within the following-described tract, now a part of their reservation, to wit:

Beginning at a point on the north line of the reservation, on the east bank of the mouth of the Cœur d'Alene River, and running due south one mile, thence due east parallel with the north boundary line to the east boundary line, thence north on the east boundary line to the northeast corner of the reservation, thence west on the north boundary line to the point of beginning.



ARTICLE II.

And it is further agreed, in consideration of the above, that the United States will pay to the said Cœur d'Alene tribe of Indians the sum of fifteen thousand ($15,000) dollars, the same to be paid to the said Indians upon the completion of all the provisions of this agreement.

ARTICLE III.

It is further agreed that the payment of the money aforesaid shall be made to the said tribe of Indians pro rata, or share and share alike, for each and every member of the said tribe as recognized by said tribe now living on said reservation.

ARTICLE IV.

The new boundary lines of the reservation, established by this agreement, or such portions thereof as are not defined by natural objects, shall be surveyed and marked in a plain and substantial manner. The cost of such surveys are to be paid by the United States.

ARTICLE V.

This agreement shall not be binding upon either party until ratified by Congress.

Dated and signed at De Smet Mission, Idaho, this 7th day of February, 1894.

JOHN LANE,
*U. S. Special Indian Agent.*

Witness:
GEO. F. STEELE.

The foregoing articles of agreement, having been fully explained to us in open council, we, the undersigned, chiefs, headmen, and principal men of the Cœur d'Alene tribe of Indians residing on the Cœur d'Alene Reservation, State of Idaho, do hereby consent and agree to all the stipulations therein contained.

Witness our hands and seals at De Smet Mission, State of Idaho, this 7th day of February, 1894.

1. Andrew Sultice, his x mark, seal.
2. Pierre Wild Shue, his x mark, seal.
3. Pierre Mse tal me, his x mark, seal.

*Head chiefs of the Cœur d'Alene Indians.*

4. Arasis So so lum so, his x mark, seal.
5. Bonnmachy Koh qui mney, his x mark, seal.
6. Basa Silla, his x mark, seal.
7. Ad da wa, his x mark, seal.
8. Sap pier, his x mark, seal.
9. Camille Tim sin ce, his x mark, seal.
10. Now el, his x mark, seal.
11. Louie Ana kou, his x mark, seal.
12. Ar ra pa, his x mark, seal.
13. Neos kon ta, his x mark, seal.
14. Ben Kol le za, his x mark, seal.
15. Andrew Mal mal la ca, his x mark, seal.
16. A chau, his x mark, seal.
17. Pi e use, his x mark, seal.
18. Louie Antelope, his x mark, seal.
19. Basil, his x mark, seal.
20. Ko nol use, his x mark, seal.
21. Neos Che as so, his x mark, seal.
22. Arriarious, his x mark, seal.
23. Andrew Diat so ka, his x mark, seal.
24. Paul A chin na, his x mark, seal.
25. Daniel, his x mark, seal.
26. Sebastian Col la quin, his x mark, seal.
27. Peal, his x mark, seal.
28. Louie Mechell, his x mark, seal.
29. Pierre Joseph La ya ish, his x mark, seal.
30. Paul, his x mark, seal.
31. Lo Lo A whopt, his x mark, seal.
32. Stanislaus, his x mark, seal.
33. Moses Ili a man, his x mark, seal.
34. Louie Michatsw, his x mark, seal.
35. Andrew Timothy, seal.
36. Joseph Whis ta ken, his x mark, seal.
37. Louie Kos qum ta, his x mark, seal.
38. Leo Sieo teu sh ta, his x mark, seal.
39. Pierre Basa, his x mark, seal.
40. Phillip, his x mark, seal.
41. So sat Ar I men saw, his x mark, seal.
42. A pel Kwa wild shon, his x mark, seal.
43. Louis Neus, seal.
44. Samuel, his x mark, seal.
45. Nicodemus Cor o tos, his x mark, seal.
46. Redell To mom or kin, his x mark, seal.
47. Louis Mul kap see, his x mark, seal.
48. Camille, his x mark, seal.
49. Augustine Chil chil ta, his x mark, seal.
50. Thomas Kion will sba, his x mark, seal.
51. Japaria Tal ya ya, his x mark, seal.
52. Basil Qua qua soo, his x mark, seal.

53. Alex son, his x mark, seal.
54. Francis She to la, his x mark, seal.
55. Sol Louie, his x mark, seal.
56. Seymour, his x mark, seal.
57. Neos Took ta, his x mark, seal.
58. Prosper Tim ol po, his x mark, seal.
59. Theodore Zeal mo scha ke, his x mark, seal.
60. Pierre Joseph kkiki, his x mark, seal.
61. Al lech chee chin takin, his x mark, seal.
62. Sa ere Ta chim ua, his x mark, seal.
63. Louis Bis cha, his x mark, seal.
64. A shau Sol lo tu ea, his x mark, seal.
65. Pierre Kol kol lu ic, his x mark, seal.
66. Thomas, his x mark, seal.
67. Isadore, his x mark, seal.
68. Pat Davenport, his x mark, seal.
69. Neos Paul, his x mark, seal.
70. Adrian, his x mark, seal.
71. Louie Che ta wa, his x mark, seal.
72. Joseph Spol quil quo, his x mark, seal.
73. Na chun, his x mark, seal.
74. Neos, his x mark, seal.
75. Mas colla Chis ches ta, his x mark, seal.
76. Andrew Youmas, his x mark, seal.
77. Abraham Whe so ta, his x mark, seal.
78. Leo So wo kou ta, his x mark, seal.
79. Abraham So o qua kim, his x mark, seal.
80. Joseph Ko lum quiway, his x mark, seal.
81. Benjamin Chil spo, his x mark, seal.
82. Louie Sam, his x mark, seal.
83. Joseph Lee chum smee, his x mark, seal.
84. Luke Tsle ma kum, his x mark, seal.
85. Phillip Welcho, seal.
86. Louie Seo oo cum mens, his x mark, seal.
87. Paul Polotkan, seal.
88. Leo Ho ho o lo, his x mark, seal.
89. Leo Go ka sah, his x mark, seal.
90. Bernard Spa cum soo, his x mark, seal.
91. Basil Clo chim mo, his x mark, seal.
92. Pierre Now wok en, his x mark, seal.
93. Barsa Jo shin nee, his x mark (old chief), seal.
94. Da Bos Se la, his x mark, seal.
95. Andrew Al le quit so, his x mark, seal.
96. Camille Cha me tal ha, his x mark, seal.
97. Louis Pierre, seal.
98. Louis Lee, seal.
99. Louie Toto, his x mark, seal.
100. Phillip Stellam, seal.
101. Colshen, his x mark, seal.
102. Patrick Nixon, seal.
103. S. E. Liberty, seal.
104. Joseph Penvy, seal.
105. Moise I. Kaynsank, his x mark, seal.
106. Schlatoen, his x mark, seal.
107. Leon, his x mark, seal.
108. Louis Pelu, his x mark, seal.
109. William Mason, his x mark, seal.
110. James Finley, his x mark, seal.
111. Nei cool lin ta, his x mark, seal.
112. Charles Du prey, his x mark, seal.

Witnesses,
GEO. F. STEELE.
THOMAS B. WARD.

I hereby certify that the foregoing articles of agreement were (care) carefully read and explained to the Indians, parties hereto in open council, and were thoroughly understood by them before signing the same, and that the agreement was executed and signed by said Indians at the De Smet Mission in Idaho, on the 7th day of February, 1894.

PAUL POLOTKAN,
*Interpreter.*

---

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
*Washington, D. C., March 14, 1894.*

SIR: I have the honor to acknowledge the receipt, by departmental reference, of a letter from the Commissioner of Indian Affairs, dated February 24, 1894, accompanied by an incomplete bill ratifying an agreement negotiated with the Cœur d'Alene Indians, dated February 7, 1894, ceding to the United States a strip of land along the north boundary of their reservation.—I am directed to complete the bill (i. e.), provide for the *survey* and *disposal* of the ceded lands.

In compliance with your directions I have added sections 3, 4, and 5, and a complete copy of the bill is herewith submitted; and your attention is respectfully directed to the following points for consideration:

The reading of the agreement provided by the Commissioner of Indian Affairs has been retained, and is incorporated in the bill. The last clause of article 1 of the agreement (p. 2) reads "thence north on the east boundary line"; the east boundary (see attached diagram) does not run *north*, its bearing is N. 32° 23′ E.; consequently the description would agree more closely with the facts if the words "north on" could be replaced by "along," thus making the above-quoted phrase read, "thence along the east boundary line," etc. Probably the suggested change could be made without involving legal complications.



Referring to pages 3 and 4 of the Commissioner's letter, this office finds no precedent for providing a town site "1 mile square," when that already laid out contains, according to the official plat forwarded by the surveyor-general, only 20 acres. I can not see how, with our limited knowledge of existing conditions, a definite value can be assigned to the town site in advance of survey and appraisement thereof.

After taking into consideration the equities of the case, I have concluded to provide for the appointment of a board of appraisement, as set forth in the bill, as the best way to secure justice to bona fide residents of Harrison and other settlers, and to provide for reimbursement to the United States of the $16,000 paid for the ceded tract.

In the bill the amount of appropriation for survey and appraisement is left blank. The *survey* alone will cost $745; the appraisement, $150, allowing five days for the work after the board assembles on the ground; total, $895, which will be increased by traveling expenses of members of the board. As the latter item will depend in part on the distance from the reservation to the members' homes, I am unable to state the total amount of the appropriation required; but the item "traveling expenses" may be readily approximated and added to the above if, in advance of the ratification of the agreement, you can decide from what section of the country the members of the proposed board of appraisement will be appointed.

The papers referring to the case are herewith returned.

Very respectfully,

S. W. LAMOREUX,
*Commissioner.*

THE SECRETARY OF THE INTERIOR.

---

A bill to ratify and confirm an agreement with the Indians occupying the Cœur d'Alene Reservation, Idaho, and make provisions for carrying the same into effect.

Whereas, John Lane, special United States Indian agent, duly designated by the Secretary of the Interior to negotiate with the Cœur d'Alene Indians for a change in the northern boundary line of their reservation so as to exclude therefrom a strip of land on which the town of Harrison and numerous settlers are located under and by virtue of a clause contained in the Indian appropriation act, approved March 3, 1893, did, on the seventh day of February, anno Domini, one thousand eight hundred and ninety-four, conclude an agreement with the various tribes or bands of Indians residing upon the Cœur d'Alene Reservation in the State of Idaho, by their chiefs, headmen, and principal men, embracing a majority of all the male adult Indians occupying said reservation, which agreement is as follows:

Agreement concluded on the 7th day of February, 1894, between John Lane, special United States Indian agent, on the part of the United States, and the Indians of the Cœur d'Alene Reservation in the State of Idaho.

ARTICLE I

This agreement made on the 7th day of February, 1894, by John Lane, United States special Indian agent, on the part of the United States, and the Cœur d'Alene Indians, residing on the Cœur d'Alene Reservation in the State of Idaho, by their chiefs, headmen, and principal men, embracing a majority of all the male adult

Indians occupying said reservation, pursuant to an item in the act of Congress making appropriations for current and contingent expenses and fulfilling treaty stipulations with Indian tribes for the fiscal year ending June 30, 1894, as follows:

"The Secretary of the Interior is hereby directed to negotiate with the Cœur d'Alene Indians for a change of the northern line of their reservation so as to exclude therefrom a strip of land on which the town of Harrison and numerous settlers are located.

"That the foregoing provision shall take effect and be in force after it shall have been submitted to and agreed to by the Indians of said tribe, and approved by the Secretary of the Interior."

Witnesseth: That the said Indians, for the consideration hereinafter named, do hereby cede, grant, and relinquish to the United States all right, title, and claim, which they now have or ever had, of, in, and to all the land embraced within the following described tract, now a part of their reservation, to wit:

"Beginning at a point on the north line of the reservation, on the east bank of the mouth of the Cœur d'Alene River, and running due south one mile; thence due east parallel with the north boundary line to the east boundry line; thence north on the east boundary line to the northeast corner of the reservation; thence west on the north boundary line to the point of beginning."

ARTICLE II.

And it is further agreed in consideration of the above that the United States will pay to the said Cœur d'Alene tribe of Indians the sum of fifteen thousand ($15,000) dollars, the same to be paid to the said Indians upon the completion of all the provisions of this agreement.

ARTICLE III.

It is further agreed that the payment of the money aforesaid shall be made to the said tribe of Indians pro rata, or share and share alike for each and every member of the said tribe as recognized by said tribe now living on said reservation.

ARTICLE IV.

The new boundary lines of the reservation, established by this agreement, or such portions thereof as are not defined by natural objects, shall be surveyed and marked in a plain and substantial manner. The cost of such surveys are to be paid by the United States.

ARTICLE V.

This agreement shall not be binding upon either party until ratified by Congress.

Dated and signed at De Smet Mission, Idaho, this 7th day of February, 1894.

JOHN LANE,
*U. S. Special Indian Agent.*

Witness:
GEO. F. STEELE.

The foregoing articles of agreement having been fully explained to us in open council, we, the undersigned, chiefs, headmen, and principal men of the Cœur d'Alene tribe of Indians residing on the Cœur d'Alene Reservation, State of Idaho, do hereby consent and agree to all the stipulations therein contained.

Witness our hands and seals at De Smet Mission, State of Idaho, this 7th day of February, 1894.

1. Andrew Sultice, his x mark, seal,
2. Pierre Wild Shue, his x mark, seal,
3. Pierre Mac tal me, his x mark, seal,

*Head chiefs of the Cœur d'Alene Indians.*

4. Arnels So so lum se, his x mark, seal.
5. Bonamachy Kon qui mucy, his x mark, seal.
6. Basss Silla, his x mark, seal.
7. Ad da wa, his x mark, seal.
8. Sap pier, his x mark, seal.
9. Camille Tim sin co, his x mark, seal.
10. Now el, his x mark, seal.
11. Louie Ans kou, his x mark, seal.
12. Ar ra pa, his x mark, seal.
13. Neos kon ta, his x mark, seal.
14. Ben Kol le za, his x mark, seal.
15. Andrew Mal mal la ca, his x mark, seal.
16. A chan, his x mark, seal.
17. Pi e use, his x mark, seal.
18. Louie Antelope, his x mark, seal.
19. Basil, his x mark, seal.
20. Ko nel use, his x mark, seal.
21. Neos Che as so, his x mark, seal.
22. Arriarious, his x mark, seal.
23. Andrew Diat so ka, his x mark, seal.
24. Paul A chin na, his x mark, seal.
25. Daniel, his x mark, seal.
26. Sebastian Col la quin, his x mark, seal.



27. Paul, his x mark, seal.
28. Louie Mechell, his x mark, seal.
29. Pierre Joseph La ya lah, his x mark, seal.
30. Paul, his x mark, seal.
31. Lo lo A whopt, his x mark, seal.
32. Stanislaus, his x mark, seal.
33. Moses Ill a man, his x mark, seal.
34. Louie Michataw, his x mark, seal.
35. Andrew Timothy, seal.
36. Joseph Whis ta ken, his x mark, seal.
37. Louis Kos qum ta, his x mark, seal.
38. Leo Sloo ten ah ta, his x mark, seal.
39. Pierre Baen, his x mark, seal.
40. Phillip, his mark, seal.
41. So sot Ar I men saw, his x mark, seal.
42. A pel Kwn wild shoe, his x mark, seal.
43. Louis Neas, seal.
44. Samuel, his x mark, seal.
45. Nicodemus Cor o tos, his x mark, seal.
46. Bedell Te mom or kin, his x mark, seal.
47. Louie Mul kap see, his x mark, seal.
48. Camille, his x mark, seal.
49. Augustine Chil chil ta, his x mark, seal.
50. Thomas Kion will sha, his x mark, seal.
51. Japaria Tal ya ya, his x mark, seal.
52. Basil qua qua soo, his x mark, seal.
53. Alex son, his x mark, seal.
54. Francis She to la, his x mark, seal.
55. Sol Louie, his x mark, seal.
56. Seymour, his x mark, seal.
57. Neos Took ta, his x mark, seal.
58. Prosper Tim el po, his x mark, seal.
59. Theodore Zeal mo scha ke, his x mark, seal.
60. Pierre Joseph kkikl, his x mark, seal.
61. Al lech choo chin takin, his x mark, seal.
62. Sa ore Ta chim na, his x mark, seal.
63. Louis Bis cha, his x mark, seal.
64. A chan Sol lo to ca, his x mark, seal.
65. Pierre Kol kol la ic, his x mark, seal.
66. Thomas, his x mark, seal.
67. Isadore, his x mark, seal.
68. Pat Davenport, his x mark, seal.
69. Neos Paul, his x mark, seal.
70. Adrian, his x mark, seal.
71. Louie Che ta wa, his x mark, seal.
72. Joseph Spol quil qno, his x mark, seal.
73. Na chan, his x mark, seal.
74. Neos, his x mark, seal.
75. Mas cella Chis choo ta, his x mark, seal.
76. Andrew Youmas, his x mark, seal.
77. Abraham Whe so ta, his x mark, seal.
78. Leo So wo kou ta, his x mark, seal.
79. Abraham, his x mark, seal.
80. Joseph Ko lim quhway, his x mark, seal.
81. Benjamin Chil spo, his x mark, seal.
82. Louie Sam, his x mark, seal.
83. Joseph Leo chum smee, his x mark, seal.
84. Luke Tato ma kum, his x mark, seal.
85. Phillip Welcho, seal.
86. Louie See oo com mens, his x mark, seal.
87. Paul Polotkan, seal.
88. Leo Ho ho o lo, his x mark, seal.
89. Leo Go ka sah, his x mark, seal.
90. Bernard Spa cum soo, his x mark, seal.
91. Basil Cle chim mo, his x mark, seal.
92. Pierre Now wok en, his x mark, seal.
93. Baras Jo shin nee, his x mark (Old Chief), seal.
94. Da-Bos Se la, his x mark, seal.
95. Andrew Al lo quit-so, his x mark, seal.
96. Camille Cha mo tal ha, his x mark, seal.
97. Louis Pierre, seal.
98. Louis Lee, seal.
99. Louie Toto, his x mark, seal.
100. Phillip Stellam, seal.
101. Colahen, his x mark, seal.
102. Patrick Nixon, seal.
103. S. E. Liberty, seal.
104. Joseph Peavy, seal.
105. Moise I. Kayseank, his x mark, seal.
106. Schlateen, his x mark, seal.
107. Leon, his x mark, seal.
108. Louis Poin, his x mark, seal.
109. William Mason, his x mark, seal.
110. James Finley, his x mark, seal.
111. Nei-cool lim ta, his x mark, seal.
112. Charles Du prey, his x mark, seal.

Witnesses:
GEO. F. STEELE.
THOMAS B. WARD.

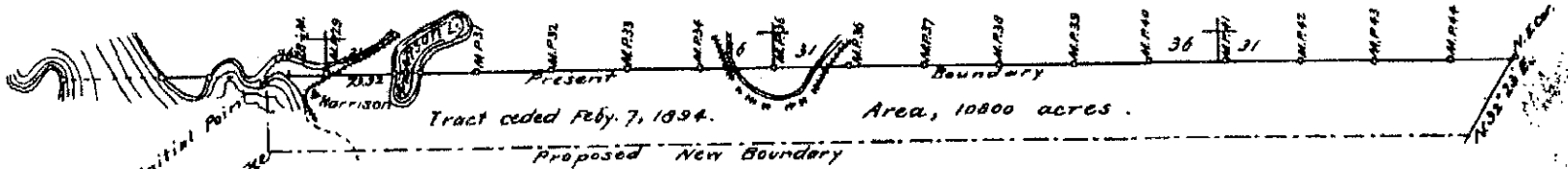
I hereby certify that the foregoing articles of agreement were (care) carefully read and explained to the Indians, parties hereto, in open council, and were thoroughly understood by them before signing the same, and that the agreement was executed and signed by said Indians at the De Smet Mission in Idaho, on the 7th day of February, 1894.

PAUL POLOTKAN,
*Interpreter.*

Therefore,

*Be it enacted by the Senate and House of Representatives of the United States in Congress assembled*, That said agreement be, and the same is hereby accepted, ratified, and confirmed.

SEC. 2. That for the purpose of carrying out the terms of said agreement, the sum of fifteen thousand dollars is hereby appropriated, to be paid out of any money in the




Coeur D'Alene Indian Reservation

HEx. 158 532

# Exhibit 15

to

Affidavit of Steven W. Strack

accompanying

State of Idaho's Memorandum in Support of
Motion for Summary Judgment

CSRBA Consolidated Subcase No. 91-7755

# RG 75 Bureau of Indian Affairs
# Northern Idaho Agency
# Coeur d'Alene Agency

## Letters sent to Commissioner of Indian Affairs 1905- 1911

**Box: No. 0001**

Yakas Yash,May 27th 1908.

The Commissioner of Indian Affairs,

Washington,D-C.

Sir:

In reply to office letter of May 20th 1908,relative to irrigation and and the cultivation of Indian lands,I submit the following,

First,all of the Indians of this reservation,are engaged in the cultivation of their lands.

Second,There is about 10000 acres of land in cultivation on this reservation,this year.

Third,The lands of this reservation do not require irrigation,as the rain fall is sufficient to grow a good crop.

Fourth. Wheat,Oats,Barley,Potatoes,Timothy,and Clover.

Very respectfully,

Superintendent.

# Exhibit 16

to

Affidavit of Steven W. Strack

accompanying

State of Idaho's Memorandum in Support of
Motion for Summary Judgment

CSRBA Consolidated Subcase No. 91-7755

Map of Coeur d'Alene Indian Reservation, Idaho. 1911

Map No. 8871, Tube No. 290

Idaho-Coeur d'Alene

Entry 110

Central Map Files

Cartographic Records of the Bureau of Indian Affairs

RG 75, NARA II

# CARTOGRAPHIC RECORDS

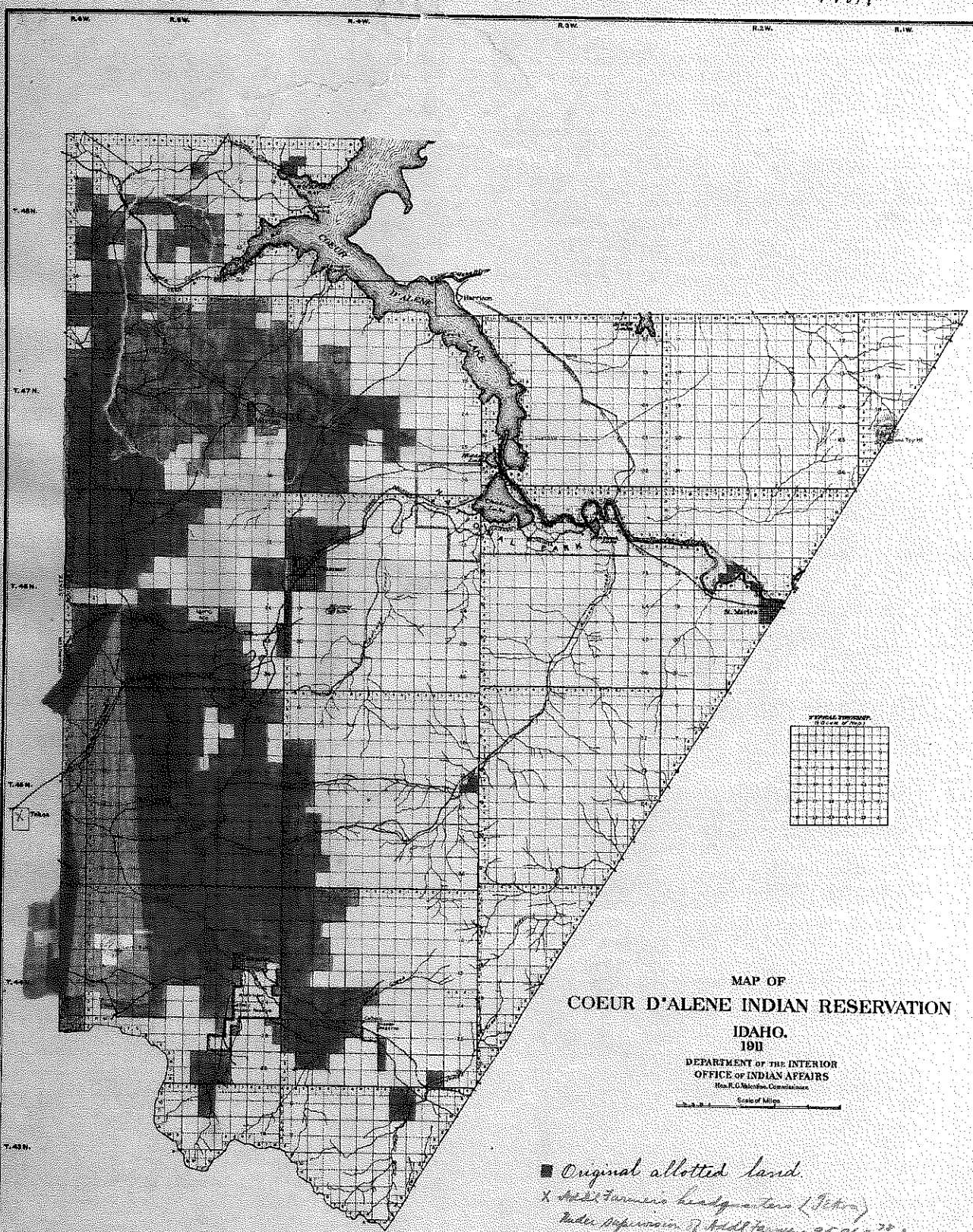
DESCRIPTION

Records of the Bureau of
Indian Affairs

| RECORD GROUP | SERIES | FILED AS |
|---|---|---|
| 75 | Central Map File | MAP 8871 |
| SUBGROUP C | | |

GENERAL SERVICES ADMINISTRATION GSA DC 79-8471 FORMS GSA NOV 65 6748

No. 1




MAP OF

# COEUR D'ALENE INDIAN RESERVATION

IDAHO.
1911

DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
Hon. R. G. Valentine, Commissioner

Scale of Miles

■ Original allotted land.
X Additional farmers headquarters (1 Jan.)
Under Reservoir 7 Additional 96960 22 Acres
Lessees 44595 acres
Population 613
No irrigation in Idaho
Construction Eng. Jan 1912 — 9800 acres

MAP NO. 8871
TUBE NO. 1247

Compiled and drawn by Frances C. Wilder, C.E.

# Exhibit 17

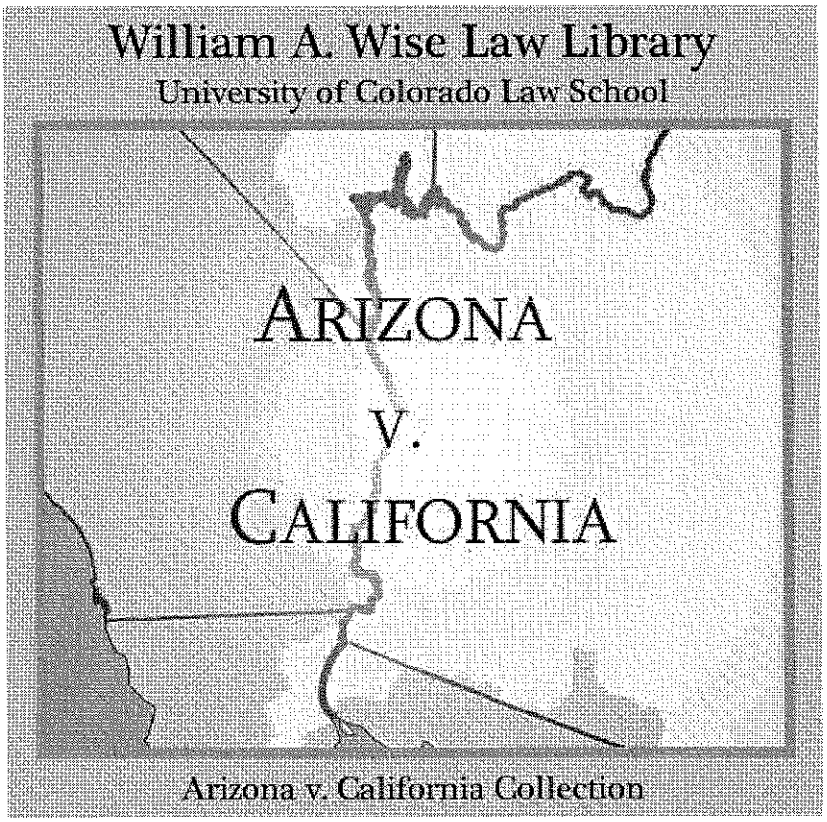
to

Affidavit of Steven W. Strack

accompanying

State of Idaho's Memorandum in Support of
Motion for Summary Judgment

CSRBA Consolidated Subcase No. 91-7755




Simon H. Rifkind, Special Master[:] Report[,] December 5, 1960, Arizona v. California, 1960 Term (U.S.).

Landmark decision:
*Arizona v. California*, 373 U.S. 546 (1963).

Arizona, complainant



# In the Supreme Court of the United States

OCTOBER TERM, 1960

STATE OF ARIZONA, COMPLAINANT

*v.*

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, AND COUNTY OF SAN DIEGO, CALIFORNIA, DEFENDANTS

THE UNITED STATES OF AMERICA AND STATE OF NEVADA, INTERVENERS

STATE OF UTAH AND STATE OF NEW MEXICO, IMPLEADED DEFENDANTS

**Simon H. Rifkind, *Special Master***

## REPORT

December 5, 1960

## TABLE OF CONTENTS

## PART ONE

## PART TWO

## PART THREE



---

## APPENDICES

erly presented in this case, it is appropriate to adjudicate it here.

The United States claims are sustained.

It has been established that the United States has the power to reserve water for the benefit of an Indian Reservation, created out of public lands, and that such a reservation of water creates a water right good against subsequent appropriators even if they beneficially use the water before the Reservation uses it. In short, the United States has the power to create a water right appurtenant to such lands without complying with state law. *Winters* v. *United States*, 207 U. S. 564 (1908), involved a suit by the United States on behalf of the Fort Belknap Indian Reservation, which was created by treaty between the United States and various Indian tribes on May 1, 1888. The land set apart for the Indians under the treaty was arid, but susceptible of sustaining agriculture if irrigated from the Milk River, a non-navigable stream which formed the northern border of the Reservation. The Court found that it was the intention of the United States and the Indians that the Indians should settle on the Reservation and change from a nomadic to a "pastoral and civilized people." 207 U. S., at 576. Subsequent to the establishment of the Indian Reservation, the defendants in the case acquired lands along the Milk River upstream from the Reservation under the Desert Land Act, 19 Stat. 377 (1877), by settling on the land and putting it to productive use by irrigation with water diverted from the Milk River. Some of the defendant farmers diverted water from the Milk River and obtained appropriative rights thereto under the Desert Land Act and the local law of Montana as early as 1895. 143 Fed. 740, 742 (1906). According to the opinion of the Circuit Court of Appeals, the Indians were diverting, at the time of trial, 5,000 miners' inches of water, most of which they began to use after appropriative rights of some of the defendants

had vested. The United States successfully sued to enjoin the upstream farmers from interfering with the flow of water to the Fort Belknap Reservation.

The Supreme Court affirmed the trial court's holdings that "there was reserved to said Indians the right to use the water of Milk River to an extent reasonably necessary to irrigate the lands included in the reserve created by the said treaty . . .," and that the defendants would be enjoined from interfering with the flow of 5,000 miners' inches of Milk River water to the Reservation. 143 Fed., at 743. The Supreme Court thus held that the reservation of water was effective as of the date that the Fort Belknap Reservation was created, 207 U. S., at 577, and that the appropriative rights obtained by the defendants subsequent to the time that the water was reserved but prior to the time that it was put to use on the Reservation were subordinate to the Reservation's rights.

The Supreme Court supported this result with the following reasoning, at p. 577:

> "The power of the Government to reserve the waters and exempt them from appropriation under the state laws is not denied, and could not be. . . . That the Government did reserve them we have decided, and for a use which would be necessarily continued through the years."

The *Winters* case has been cited many times as establishing that the United States may, when it creates an Indian Reservation, reserve water for the future needs of that Reservation, and that appropriative water rights of others established subsequent to the reservation must give way when it becomes necessary for the Indian Reservation to utilize additional water for its expanding needs. *United States* v. *Powers*, 305 U. S. 527 (1939); *United States* v. *Ahtanum Irrigation District*, 236 F.2d 321 (9th Cir. 1956), *cert. denied*, 352 U. S. 988 (1957); *United States*

v. *Walker River Irrigation District*, 104 F.2d 334 (9th Cir. 1939); *Conrad Investing Co.* v. *United States*, 161 Fed. 829 (9th Cir. 1908). In the *Winters* case the United States exercised its power to reserve water by a treaty; but the power itself stems from the United States' property rights in the water, not from the treaty power. Since the United States has the power to reserve water, by treaty, against appropriation under state law, there is no reason why it lacks the power to do so by statute or executive order. In the *Walker River* case, the Court of Appeals squarely held that the United States had reserved water for an Indian Reservation which had been created by executive order.

It is unnecessary, for the purposes of this case, to explore the origin or limits of such power to reserve water against subsequent appropriators. The authorities cited above sufficiently sustain the validity of such a reservation to preserve the Indians' rights here under consideration.

The question to be decided, therefore, as to each Indian Reservation which can divert water from the mainstream of the Colorado River is whether the United States exercised the power to reserve such water for the Reservation's future needs. As stated in the *Walker River* case, 104 F. 2d, at 336:

> "The power of the Government to reserve the waters and thus exempt them from subsequent appropriation by others is beyond debate. . . . The question is merely whether in this instance the power was exercised."

The United States need not expressly reserve waters for the benefit of an Indian Reservation; an implied reservation is effective. Indeed, in all of the cases cited above, including *Winters* v. *United States* itself, the intent to reserve water was never explicitly stated at the time the Indian Reservation was established; rather that intent was implied from the circumstances surrounding the creation of the Reservation. In the present case I have found that the

United States intended to reserve mainstream water for the reasonable future needs of the following Indian Reservations: Chemehuevi, Cocopah, Yuma, Colorado River and Fort Mohave. As to each it is apparent that it was intended that the Indians would settle on the Reservation land and develop an agricultural economy. The land, however, is too arid to support such an economy without irrigation from the Colorado River. It would be unconscionable for the United States to have coerced or induced Indians onto a Reservation without providing the water necessary to make the lands habitable. I refuse to accept this possibility as to any of the mainstream Indian Reservations since there is no evidence as to any of them that such was the case. As the Court of Appeals stated in the *Walker River* case, at page 339: "It would be irrational to assume that the intent was merely to set aside the arid soil without reserving the means of rendering it productive."

Also, wherever I have found an intent to reserve water, I have inferred, absent evidence to the contrary, that the reservation was not limited to the needs of the population then resident upon the land, nor to the acreage being irrigated when the Reservation was created. I have concluded that enough water was reserved to satisfy the future expanding agricultural and related water needs of each Indian Reservation. Invariably the United States intended that the Indian tribes settled on a Reservation would remain there for generations, and the possibility that other Indians would be settled on the Reservation could not be excluded. Certainly the possibility of expanding populations, expanding agricultural development, and hence expanding water needs must have been apparent at the time each Reservation was created. It is unreasonable to attribute to the United States an intention or an expectation that the Indians would remain stagnant or die out when they were settled on a Reservation. Since the Indians could remain

on these Reservations and develop their society and economy only if water from the Colorado River was available to meet their future needs, I have found that the United States, when it reserved water, reserved it for all of such needs.

This conclusion comports with the holdings in the three cases decided by the Court of Appeals for the Ninth Circuit which are cited above. As that Court stated in *United States* v. *Ahtanum Irrigation District*, 236 F.2d 321, 327 (9th Cir. 1956):

> "It is plain from our decision in the *Conrad Investing Co.* case, *supra*, that the paramount right of the Indians to the waters of Ahtanum Creek was not limited to the use of the Indians at any given date but this right extended to the ultimate needs of the Indians as those needs and requirements should grow to keep pace with the development of Indian agriculture upon the reservation."

The conclusion reached here is also consistent with the holding in the *Winters* case that the upstream farmers could not interfere with uses on the Indian Reservation which were initiated subsequent to the farmers' diversions.

The suggestion is unacceptable that the United States intended that the Indians would be required to obtain water for their future needs by acquiring appropriative rights under state law. The Indians were not an agricultural people and it was necessary for them to develop their agricultural skills after settling on the Reservations. It must have been apparent that if they were thrown into competition with the more advanced non-Indians in a race to acquire rights to water by putting it to beneficial use, they would have lost the match before it was begun. Rather than assuming that the United States intended to put the Indians in the position of having to leave their Reservations as their water needs increased if they were unable to satisfy these needs by acquiring appro-

priative rights under state law, I have concluded that reservations of water by the United States included enough to supply expanding needs regardless of state water law.

This brings us to the question of quantity. This is sharply debated, and many conflicting views have been advanced. I have concluded that the United States effectuated the intention to provide for the future needs of the Indians by reserving sufficient water to irrigate all of the practicably irrigable lands in a Reservation and to supply related stock and domestic uses. The magnitude of the water rights created by the United States is measured by the amount of irrigable land set aside within a Reservation, not by the number of Indians inhabiting it. At the times of the creation of the five Indian Reservations in question, it was impossible to predict the future needs of the Indians who might inhabit them. Indeed, in some instances it was not clear which Indian tribes would ultimately be settled on a particular Reservation. What the United States did, in withdrawing public lands for these Indian Reservations, was to establish areas that could be used in the indefinite future to satisfy the needs of Indian tribes in the United States as those needs might develop. It follows from this that the United States intended to reserve enough water to make the lands productive, in other words, enough to irrigate all of the practicably irrigable acreage. Only by reserving water in this manner could the United States ensure that the Reservation lands would be usable when needed to support an Indian economy. This conclusion is also supported by the fact that the irrigable land originally withdrawn for each of the five Indian Reservations was considerably more extensive than was necessary to support the Indians who inhabited the Reservations immediately after their establishment. The only explanation for this withdrawal of excess irrigable acreage is that the United States intended it to be utilized in the future.

It must have been apparent that unless the United States reserved water for the land at the time of withdrawal, there might be no water left to appropriate at the time that the land was needed for the purposes for which it was withdrawn.

Arizona argues that the United States reserved water for the Indians themselves and not for the lands withdrawn for a Reservation. Arizona seems to envisage that the United States intended to create water rights in gross which would fluctuate in magnitude as the Indian population and needs fluctuated, the water right being measured by the amount of water needed at any particular time by the Indians actually inhabiting a particular Reservation. As pointed out above, the more sensible conclusion is that the United States intended to reserve enough water to irrigate all of the practicably irrigable lands on a Reservation and that the water rights thereby created would run to defined lands, as is generally true of water rights.

But even if Arizona were correct in her contention, the most feasible way to give full effect to the water rights created by the United States, as Arizona defines them, would be to decree to each Reservation enough water to irrigate all of the practicably irrigable acreage. It is clear that the water rights of the five Reservations in question cannot be fixed at present uses for this would defeat the basic purpose of reserving water to meet future requirements. Even if, as Arizona argues, the reservation of water was in gross for Indians and not Reservation lands, the Indians' needs may well increase in the future and these increased needs would have to be provided for. Thus, under the Arizona theory, there are two possible methods of framing the decree in this action, other than in terms of irrigable acreage.

One possibility would be to adopt an open-end decree, simply stating that each Reservation may divert at any

particular time all the water reasonably necessary for its agricultural and related uses as against those who appropriated water subsequent to its establishment. However, such a limitless claim would place all junior water rights in jeopardy of the uncertain and the unknowable. Financing of irrigation projects would be severely hampered if investors were faced with the possibility that expanding needs on an Indian Reservation might result in a reduction of the project's water supply. Moreover, it would not give the United States any certainty as to the extent of its reserved rights, which would undoubtedly hamper the United States in developing them. Since, under the Arizona theory, United States water rights vary with changes in Indian population, the planning of works to serve future needs would be difficult because the United States could never know whether sufficient water to operate the works economically would be legally available.

The other possibility, which would avoid the serious disadvantage of creating uncertainty as to the extent of the reserved rights, would be to predict the ultimate needs of each Reservation and to decree that much water for its future uses. The shortcoming of this solution, however, lies in the difficulty of predicting the future needs of Indian Reservations. Failure to foresee expanding requirements would result in a forfeiture of the Indians' water rights and would stultify development of the Reservations. Whether it is ever possible accurately to predict the future needs of an Indian Reservation, it is clearly not possible in this case where the attention of the parties has been directed to a great many complex and important issues quite apart from those relating to the Indians. Whatever might be possible in a case involving solely the issue of the reserved rights of a

single Indian Reservation,[5] it would not be possible to predict future Reservation needs in this litigation.

Therefore, the most feasible decree that could be adopted in this case, even accepting Arizona's contention, would be to establish a water right for each of the five Reservations in the amount of water necessary to irrigate all of the practicably irrigable acreage on the Reservation and to satisfy related stock and domestic uses. This will preserve the full extent of the water rights created by the United States and will establish water rights of fixed magnitude and priority so as to provide certainty for both the United States and non-Indian users.

The amount of water reserved for the five Reservations, and the water rights created thereby, are measured by the water needed for agricultural, stock and related domestic purposes. The reservations of water were made for the purpose of enabling the Indians to develop a viable agricultural economy; other uses, such as those for industry, which might consume substantially more water than agricultural uses, were not contemplated at the time the Reservations were created. Indeed, the United States asks only for enough water to satisfy future agricultural and related uses. This does not necessarily mean, however, that water reserved for Indian Reservations may not be used for purposes other than agricultural and related uses. The question of change in the character of use is not before me. I hold only that the amount of water reserved, and hence the magnitude of the water rights created, is determined by agricultural and related requirements, since when the water was reserved that was the purpose of the reservation.

[5]Even in such cases, courts have not attempted to bind the Indians on the basis of a prediction as to future needs. See Conrad Investment Co. v. United States, 161 Fed. 829 (9th Cir. 1908).

# Exhibit 18

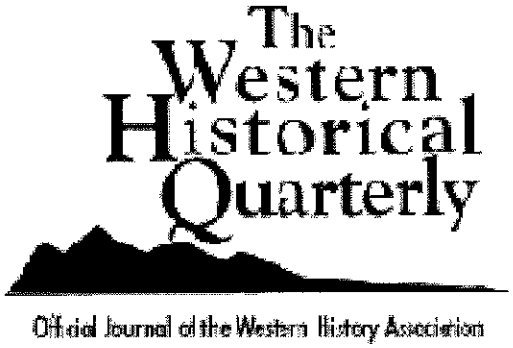
to

Affidavit of Steven W. Strack

accompanying

State of Idaho's Memorandum in Support of
Motion for Summary Judgment

CSRBA Consolidated Subcase No. 91-7755






# *A Time of Disintegration: The Coeur d'Alene and the Dawes Act*

Ross R. Cotroneo and Jack Dozier

In the history of Indian-government relations one of the most important pieces of legislation enacted was the General Allotment Act, or Dawes Severalty Act of 1887.[1] Operating on the tenet that the tribe had to be destroyed as a political, social, and cultural entity before the Indian could be assimilated, the act provided for the dissolution of tribal boundaries by giving the land to the Indians in severalty. Each tribesman was to be provided a 40 to 160 acre tract of land, and the title to it was to be held in trust by the government for a period of twenty-five years. The trust clause was included as a safeguard to prevent the Indians from disposing of the land before they could be educated as to its value and taught to earn a living from it. The full rights of citizenship were also to be conferred upon the Indians at the expiration of the trust period.

Under another provision of the act, those lands remaining after distribution of allotments to the Indians were to be sold to white settlers. This had a two-fold purpose; first, additional lands were opened to settlement; and second, it was hoped that the resultant close intermingling of the two cultures would result in the Indians' more rapid acceptance of the white man's ways. The money received from the sale of these lands was to be expended by the secretary of the interior for the education and advancement of the Indians.

Applied first in Oklahoma in 1890, and then in other areas, the act became a partial answer to the problems caused by the disappearance of cheap frontier land. Rather than a method for assimilating the Indians, the law came to be used primarily as an instrument for the aggrandizement of their territorial holdings. Regardless of its original intent, once the act

Ross R. Cotroneo is associate professor of history at Oregon College of Education, Monmouth. Jack Dozier completed his Ph.D. degree in July at the University of Utah.

[1] U. S., *Statutes at Large,* 24 Stat. 388.

was applied to the Coeur d'Alene Indians in northern Idaho [2] its results were disruptively profound, causing the irrevocable loss of approximately 84 percent of the tribal holdings, a total economic and political destruction of the tribal entity, and an almost complete loss of individual initiative.[3]

One of the most confusing aspects of federal Indian policy after the enactment of the Dawes legislation was that the government continued to enter into agreements with various tribes whereby supposedly permanent reservations were established for the Indians. It was thus with the Coeur d'Alene Treaty of 1889. In that agreement, a United States Senate containing virtually the same membership responsible for the enactment of the Dawes Act promised the Coeur d'Alene that, while reducing the size of their holdings, ". . . no part of [their] reservation shall ever be sold, occupied, open to white settlement or otherwise disposed of without the consent of the Indians residing on said reservation." [4] While one cannot help but question the honesty and intelligence of such a vacillating program, it cannot be denied that the refusal of Congress to apply the Dawes concepts to the Coeur d'Alene at the time of the treaty gave the Idaho tribesmen time to achieve a certain amount of economic solidification before the introduction of the disruptive effects of the act.

Believing themselves safe from further incursion, the Coeur d'Alene began to lay the foundation for their future on the smaller reservation. They broke the soil for the first time, purchased breeding animals to improve their stock, and constructed comfortable homes. Almost all who came into contact with them at this time were impressed with the alacrity displayed by the tribesmen in bettering their conditions. With the acceptance of the treaty by Congress in 1891, and the subsequent receipt of the money for the territory ceded to the United States, they became even more

[2] At the time of the white man's arrival in northern Idaho there were three major subdivisions of the tribe. Each of these subdivisions, or bands, lived in a clearly defined area of the tribal expanse. One group lived along the Spokane River and Coeur d'Alene Lake, with the present site of the city of Coeur d'Alene as the center of activity. Another lived along the Coeur d'Alene River, with headquarters near the present site of Cataldo. The third group frequented the banks of the Saint Joe River and had their central meeting place near the mouth of that stream. See Jack Dozier, "History of the Coeur d'Alene Indians to 1900" (unpublished master's thesis, University of Idaho, Moscow, 1961).

[3] Felix S. Cohen, *Federal Indian Law,* Department of the Interior (Washington, 1958), 129.

[4] U.S. Congress, Senate, *Message of the President of the United States Transmitting a Letter of the Secretary of the Interior Relating to the Purchase of a Part of the Coeur d'Alene Reservation* (51 Cong., 1 sess., 1890, *Senate Exec. Doc. No.* 14), 68.

active in their drive for the development of their property. A sawmill and gristmill were erected, more and better roads were constructed, land was drained, fields were cleared, and the education system was improved. The merchants of the neighboring towns of Farmington, Tekoa, and Coeur d'Alene were impressed with the enterprise of the tribe; not only was Indian patronage of their business establishments welcomed, but also it was avidly solicited because of the prompt manner in which obligations were met.

Even though the Coeur d'Alene were not overly rich in cash resources at the turn of the twentieth century, the wherewithal of becoming a wealthy tribe was at their immediate disposal. Owning property in excess of 400,000 acres, the future held no fear in economic matters for the inhabitants of the reservation. Each tribesman, while not possessing title to his land, did hold and work a specific tract looked upon as his own. The choice of property was free of restriction as long as one did not attempt to encroach upon his brothers' holdings. In the event two or more Indians laid claim to the same area, the dispute was adjudicated by the tribal leaders and the Jesuit priests. Some of the personal holdings ran as high as 2,000 acres.[5]

Since the reservation embraced some of the most productive soil in northern Idaho, outstanding yields of wheat, oats, and hay were harvested annually. The region was made even more attractive by the presence of adequate transportation facilities, being served by the Chicago, Milwaukee, St. Paul, and Pacific Railway Company, by the Oregon Railroad and Navigation Company, and by lake steamer from the town of Coeur d'Alene. These companies not only provided transportation for the crops and livestock but also were able and willing to carry the abundant stands of timber within the reservation boundaries, if and when it was opened to harvest. Considering the potential wealth to be derived from the area, it is not surprising that the reservation was eventually thrown open to settlement under the provisions of the Dawes Act.

In reality, no immediate effort was made to enforce the terms of the Dawes Act on the Coeur d'Alene. The government was quite circumspect in abiding by the articles of the Treaty of 1889 in the years closely following its approval. The $500,000 for the ceded area was given to the tribe and was distributed on a share-and-share-alike basis among the tribal members. The $150,000 promised them in the Treaty of 1887, and then

[5] Harold D. Stevens, "An Analysis of Coeur d'Alene Indian-White Interrelations" (unpublished master's thesis, University of Idaho, Moscow, 1955), 78.

included in the final agreement, was expended as planned. The government also provided $30,000 for the construction of schools and mills, and the remaining $120,000 was made available for the use of the Coeur d'Alene over the next fifteen years at the rate of $8,000 per annum. Between $3,000 and $3,500 in additional funds were appropriated each year by Congress to provide them with medicine, a doctor, a blacksmith, and a carpenter.[6]

It was not long after this that it became necessary for the government to secure some of the land held by the Coeur d'Alene. Happily, the property was not taken without the consent of the Indians, nor without adequate compensation for its loss. The citizens of Harrison, Idaho, had become dissatisfied with the fact that their town and a few surrounding farms were located within the confines of the reservation. Making no attempt to usurp the land, the people petitioned the government to purchase the area from the Indians. John Lane, Special United States agent, was sent to answer their appeal in 1894. In return for $15,000, he secured the land, satisfying both parties.[7]

During the first decade of the twentieth century, the Coeur d'Alene received several requests to sell additional lands. In March of 1908, Congress passed a bill enabling the Woodlawn Cemetery Association of St. Maries to purchase 40 acres of land on the reservation.[8] The same year, two additional purchases of Indian land were made. The Milwaukee railroad was deeded a 3,000 by 200 foot tract of land near Plummer, Idaho, as a site for a junction and depot.[9] At the same time, the Secretary of the Interior was ordered to purchase some 8,000 acres contiguous to Chatcolet and Benewah lakes, which were given to the state of Idaho for use as a park.[10] The area was later developed into Heyden State Park. The Secretary of the Interior received congressional approval in 1909 to sell 640 acres of reservation lands to the Board of Regents of the University of Idaho on such terms as he could acquire from the Indians.[11] But this was the last occasion in which the tribe would have a voice in the disposi-

[6] Charles J. Kappler, *Indian Affairs: Laws and Treaties* (Washington, 1904), IV, 41.

[7] Kappler, *Indian Affairs*, II, 531.

[8] U. S., *Statutes at Large*, 35 Stat. 50.

[9] U. S., *Statutes at Large*, 35 Stat. 78.

[10] U. S., *Statutes at Large*, 35 Stat. 78.

[11] U. S., *Statutes at Large*, 35 Stat. 626.

tion of its lands. After this date the lands were taken under the provisions of the Dawes Act.

During the same time these purchases were being transacted, in fact, the government was taking steps preparatory to opening the reservation to white settlement. The process began in 1905 when Congress appropriated $2,500 for the survey of the reservation and the subdivision of individual tracts of land to be allotted to the members of the tribe.[12] Soon thereafter federal engineers descended upon the reservation, completing the survey in the summer of 1906. When news of the pending opening of the reservation reached the city of Coeur d'Alene, it was greeted by an outburst of enthusiasm. One local newspaper declared that "The opening of these lands means a great rush to the area." The paper reflected excitement for the day when Coeur d'Alene Lake, completely freed from tribal ownership, would become the resort area of the inland empire.[13]

The next step in the procedure of opening the reservation came in the Appropriation Act of June 21, 1906.[14] The section of this bill appropriating the last of the fifteen annual payments of $8,000 promised to the Coeur d'Alene in the Treaty of 1889 also ordered the secretary of the interior to begin awarding severalty allotments to the residents of the reservation. By the terms of the act, the secretary was to grant each man, woman, and child 160 acres of land, after which the remaining lands were to be appraised and classified as to their nature — agricultural, grazing, timber, or mineral. Once the appraisal was completed, the land not allotted or reserved for an Indian school, agency, or other purpose was to be opened to entry and settlement. The secretary was further directed to purchase sections sixteen and thirty-six of each township for the government at a price of $1.25 per acre. These sections were to be given to the state of Idaho for the support of schools. The money arising from all sales was to be deposited with the treasury and expended under the direction of the Secretary of the Interior for the advancement and education of the tribe. In addition to the sale price, a homesteading fee was to be paid to the government when the settler took up his land. Any of the lands not settled within five years were to be sold to the highest bidder at not less than one dollar per acre; if unclaimed after ten years, these lands were to be sold to the highest bidder regardless of the amount of the bid. Be-

[12] U. S., *Statutes at Large*, 33 Stat. 211.

[13] *Coeur d'Alene Evening Press*, November 17, 1906, 1.

[14] U. S., *Statutes at Large*, 34 Stat. 335.

cause of the comparative cheapness of the appraised value of the land — an average of less than two dollars an acre — virtually all the land was taken at the time of opening, thereby removing any difficulty on the part of the government in ridding itself of worthless holdings.

Once the Coeur d'Alene learned of the plan to open their reservation, they reacted immediately. Many of the Indians looked upon this new move by the government as nothing short of open thievery.[15] Feeling that this was an unwarranted intrusion on their rights, they realized the necessity of organizing a program to stave off the seizure of their property, but were nonetheless unable to arrive at any concrete decision as to what plan of action would be best. After several months of deliberation, they decided to send a delegation to Washington, D.C., to plead their case. Chief Peter Moctelme headed the group that journeyed to the Capitol in the early part of 1908 to lay their problem before the commissioner of Indian affairs. Their hopes were in vain. To Chief Moctelme's complaint that the Coeur d'Alene had been promised their lands in perpetuity only nineteen years earlier, the commissioner informed the delegation that since Congress had originally awarded them their lands by passing a law, it could also take the land from them simply by enacting another law. Furthermore, the commissioner informed them, the Coeur d'Alene had no reason for complaint as they were each receiving 160 acres of land while many other tribes were only receiving 40 to 80 acres per member.[16] Still dissatisfied, Moctelme next visited Senator William Heyburn of Idaho, whom the chief considered to be a good friend of the Coeur d'Alene. Upon being advised by the senator that it was useless to fight and that the Coeur d'Alene were indeed fortunate to receive 160 acres per person, Chief Moctelme's objections seem to have disappeared.[17] He returned home to advise his people to prepare for the opening of the reservation. But his advice was unnecessary, for upon his return he found that the allotment process had already begun under the leadership of William B. Sams,

[15] Information received in a personal interview with Ignace Garry, member of the Coeur d'Alene tribe, Plummer, Idaho, September 14, 1961. Hereafter cited as Ignace Garry interview.

[16] Information received in a personal interview with Stanislaus Aripa, member of the Coeur d'Alene tribe, Plummer, Idaho, September 30, 1961. Hereafter cited as Stanislaus Aripa interview. Aripa was the official interpreter for the delegation visiting Washington, D.C., in 1908.

[17] Stanislaus Aripa interview.

special land agent appointed by the president to oversee the breaking up of the reservation.

Whenever possible, the Coeur d'Alene were given the same lands on which they had been living, but because of the necessity of maintaining the 160-acre size, a few were forced to move to new locations. For some rather clouded reason, the subdivision of the Indian lands caused an internal problem on the reservation. In keeping with the Treaty of 1889, approximately one hundred Spokane Indians had been settled on the Coeur d'Alene reservation prior to the turn of the century. As an inducement to secure the Spokanes' removal from their ancestral grounds, the government had constructed crude homes and plowed ten acres of ground for each of them on the Coeur d'Alene reservation. This proved to be a mistake, for although welcomed by the Coeur d'Alene and eventually adopted as blood members of the tribe, the Spokane received strong opposition when they attempted to claim any of the Coeur d'Alene communal holdings above the ten-acre amount. This caused several small incidents between the two groups, and over the course of a few years a rather strong animosity had developed. Now, when the government land agents began to treat the Spokane as equals with the Coeur d'Alene in the awarding of allotments, the Coeur d'Alene rebelled by demanding that the Spokane be given only the ten acres comprising their original holdings. It is not known whether this was done by the Coeur d'Alene out of spite or in the hope that their holdings would be increased in proportion to the reduction of the Spokane allotments, but the difficulty was finally resolved when Agent Sams convinced the Coeur d'Alene they would suffer no loss by allowing the Spokane a full share of land. Understanding at last that the land must either be claimed by the Spokane or left for the whites, the Coeur d'Alene capitulated in favor of their red cousins.[18]

The allotment process continued through 1908 and the early part of 1909 with a minimum of difficulty. The heads of families not only had to choose their own allotment, but in many instances had to select lands for their wives and children as well. This caused a small amount of confusion due to the fact that one who had decided upon a specific piece of ground would find it already spoken for when he attempted to secure it for a member of his family. In such cases, the family heads would then look over other allotments preparatory to making another choice. On July 13, 1909, the allotments were completed, with 638 Indians — 541 Coeur

[18] Ignace Garry interview.

d'Alene and 97 Spokane — each receiving a quarter section of land, totaling 104,076.53 acres, an area approximately one-fourth the size of the reservation prior to the application of severalty.[19]

Events now moved rapidly. On May 22, 1909, even before all the Coeur d'Alene had been allotted, President William H. Taft ordered that all the nonmineral and unreserved lands lying within the Coeur d'Alene reservation be open to settlement and entry under the homestead laws of the United States.[20] Roughly 6,000 acres of the Spokane reservation in Washington and 450,000 acres of the Flathead reservation in Montana were ordered opened at the same time. The proclamation also established the rules and procedures by which the opening would be governed. First, all persons eligible to make a homestead entry were to register between the dates of July 15 and August 5, 1909, at the land office to be opened in Coeur d'Alene, Idaho. Then, on August 9, four days after the close of registration, the names of those to receive land were to be selected by lottery from the total number registered until all available lands were exhausted. The names of those people whose registration forms were selected were to be recorded in numerical order so that each individual could select his homestead in the order in which his name was drawn. Names above the amount of land actually available were to be drawn in the event that those with higher numbers did not file on the land. The next step in the procedure, to begin on April 1, 1910, called for those who were eligible for land to submit their applications to enter to the federal land agent at Coeur d'Alene. At that time, the homesteader would be expected to select the plot of ground he desired. On September 1, 1910, the lands could be entered.

The rules and regulations now established, the government began to advertise the opening of the reservation lands for settlement. Public interest, earlier confined to the residents of the immediate area, now began to spread and grow throughout the Pacific Northwest. Hearing of the opportunity, many heretofore landless people began to hope that good luck would smile on them in the coming drawing.

James B. Witten, an honest and capable official who normally served as the head of the legal department of the General Land Office, was personally selected by the president to serve as the superintendent of the

[19] United States Department of the Interior, *Reports of the Department of Interior for the Fiscal Year Ending June 30, 1913: Indian Affairs and Territories* (Washington, 1914), 101. Hereafter cited as *Interior Department Report, 1913.*

[20] U. S., *Statutes at Large,* 36 Stat. 2494.

opening of the reservation. The choice proved to be a good one, as discovered by the citizens of Coeur d'Alene shortly after his arrival to assume duties. A land office was staffed and equipped, the area's citizens were advised of the problems soon to confront them when the expected large influx of homeseekers arrived, and approximate figures were released on the amount of land to be made available for settlement. Superintendent Witten issued a warning of his opposition to those registering for strictly speculative purposes and a somber note of caution to those who came for nothing other than to challenge "lady luck." The little city was soon filled with newcomers of every description.[21]

Registration closed at midnight, August 4, 1909, with a total of 104,416 people having registered. At 10 o'clock on August 9, the second stage began with the public drawing of registration slips. The drawing continued until August 12, when a total of 2,500 names had been selected, completing that part of the procedure. The lottery now over, all the landseekers returned home to await the following April when the first 1,350 of the 2,500 whose names had been drawn would be allowed to file on the land. The 1,150 extra names had been picked in the event that some of the land went unclaimed by those with prior choice. Coeur d'Alene meanwhile set about to repair the damage wrought upon the city during the course of the past two months.

On the morning of May 2, 1910, after a month's delay, the doors of the land office were opened to admit those who would file on the first day. Each person chose his land in the order in which his name had been drawn. The filing was closed on May 17, with the prescribed 1,350 plots of land totaling 219,767 acres being awarded.[22]

The actual settlement of the homesteads was accomplished with minimal difficulty. There were the usual mistakes made in locating boundary markers, and although there were some arguments, they were not accompanied by violence. Rather than fight the inevitable, the Coeur d'Alene took no measures to prevent the entrance of the whites and some even assisted the homesteaders in locating their boundaries. In one or two instances, when the settlers began to clear Indian land in the mistaken belief that it was theirs, the Coeur d'Alene to whom the land belonged

[21] *Coeur d'Alene Evening Press,* June 27, 1909, 2. For a more detailed discussion of the problems suffered by the citizens of Coeur d'Alene during this period, see Jack Dozier, "The Coeur d'Alene Land Rush, 1909–10," *Pacific Northwest Quarterly,* LIII, 1962, 145–50.

[22] *Interior Department Report, 1913,* 101.

allowed them to continue for several days before telling them of their error.[23] It was indeed an easy method of getting their lands cleared and also provided a good laugh at the white man's expense. In this peaceful manner the invasion of the Coeur d'Alene reservation was accomplished; and although the reservation boundaries remained the same, the tribesmen suffered the irrevocable loss of slightly more than one-half of the lands promised them in perpetuity some nineteen years earlier. The early predictions of the economic benefits to be derived from the opening of the reservation were amply borne out in the succeeding years. The new farms did add materially to the wheat production of northern Idaho, and Lake Coeur d'Alene did indeed become the resort area of the inland empire.

As for the Coeur d'Alene, the loss of the land was not without its compensation. Although it does not begin to approach the value of the land in today's market, the Indians received a total of $428,732.79 from the sale of the land, an average of slightly less than two dollars per acre.[24] In keeping with the articles of the Dawes Act, the sale receipts were deposited with the treasury and expended under the direction of the Secretary of the Interior for such things as the purchase of farm implements and the construction of roads and bridges. Because of the decline of central authority among the tribe after the whites entered the reservation, and for what now seem obvious reasons, no exact accounting was ever given the Coeur d'Alene as to the manner in which the money was spent, but it is strongly suspected that much of the money was used in governmental administration of the tribe's affairs, which the government was supposed to pay for.[25]

Still, had the Coeur d'Alene now been left alone to pursue the course outlined in the Dawes Act, things might not have proceeded in such a sad manner, for as surely as the nineteenth century had been the era of great progress for the Coeur d'Alene, the first half of the twentieth century was to become a period of profound regression. As previously noted, while the Dawes Act had as its ultimate goal the integration of white and Indian societies, it nevertheless recognized the danger of awarding the Indians their lands in severalty without also protecting them against the alienation

[23] Stanislaus Aripa interview.

[24] *Interior Department Report, 1913,* 101.

[25] Information received in a personal interview with Joseph R. Garry, president of the Coeur d'Alene tribal council, Plummer, Idaho, August 28, 1961. Hereafter cited as Joseph Garry interview.

of their lands. The clause containing the twenty-five-year trust period was thought to contain the needed safeguards, and had it continued in effect, 1934 would have been the earliest date by which any Coeur d'Alene could have disposed of his holdings. Unfortunately, this was not to be.

In 1906 Congress removed the trust restriction on Indian lands to the extent that the Secretary of the Interior could confer title to the land if, in his opinion, the Indian owner was adjudged to be competent.[26] Yet, no attempt was made to define just what constituted competency. It could mean that the Indian was a Christian, that he could write his name, that he wore white man's clothing, that he wore his hair short, and so forth. Each individual Indian agent apparently had his own peculiar method of determining competency, and since the Secretary of the Interior rarely disregarded such recommendations, many fee patents were issued to tribesmen who were totally unprepared to assume the responsibility of landownership. By enacting this piece of legislation, Congress apparently did not intend to adopt a policy of favoring the removal of trust restrictions, evidenced by the fact that in the same year another law was passed giving the president power to extend the trust period beyond the original twenty-five years if, in his opinion, the Indians involved were not ready to accept private ownership of their lands.[27]

But all too many of the Indian agents refused to accept the trust clause as a vital necessity to the protection of Indian rights. Laboring under the misguided belief that they were assisting the Indians in acquiring equality with the whites, the agents made every effort to get them to take advantage of the new act. During the first three years in which the Secretary of the Interior was allowed to award fee patents to "competent" Indians, 60 percent of those receiving fee patents sold them almost immediately, thereby becoming landless people incapable of earning an adequate livelihood.[28]

The further alienation of Indian lands was assured in 1910 when Congress passed another act giving the Secretary of the Interior the additional authority, under certain conditions, to dispose of trust land upon the death of an Indian allottee. Should an Indian holding a trust patent die intestate, the act empowered the secretary to ascertain the legal heir and to present him with a fee patent or, if the heir was adjudged in-

[26] U. S., *Statutes at Large*, 34 Stat. 182.

[27] U. S., *Statutes at Large*, 34 Stat. 326.

[28] Cohen, *Federal Indian Law*, 253.

competent, to sell the land to the highest bidder and give the money to the heir.[29] Needless to say, many thousands of additional acres of Indian lands were alienated through this process.

The first Coeur d'Alene fee patents were applied for in 1913.[30] The Jesuit priests and some of the more aware tribesmen attempted to prevent this but were apparently unable to compete with the arguments expounded by those in favor of concluding trust control. Various reasons were used to convince the Coeur d'Alene to accept patents. As the Indians of the United States did not receive rights of citizenship until 1924,[31] the most telling argument appears to have been one of advising the Coeur d'Alene that they would be able to enjoy all rights and privileges of citizenship promised them by the Dawes Act once they gained title to their land. Another convincing argument was to tell the Coeur d'Alene they would be free of federal control and restriction upon accepting a fee patent.[32]

The approaches were effective. During the first year of application, 1913, thirty-one fee patents totaling 5,021.49 acres were issued to the inhabitants of the Coeur d'Alene reservation,[33] and without exception all of this land was sold from Indian ownership in a relatively short period of time.

By 1920 some 197 patents totaling 31,080.97 acres had been issued,[34] with the majority of Indians continuing to lose their land upon receipt of title. Many of them openly sold the land, while others lost their holdings through a more insidious process — the mortgage. Banks, merchants, and private individuals freely loaned money and extended credit to the Coeur d'Alene providing that their farms were fee patented. Then when they could not repay, the lands were seized to satisfy the debt.[35] It is little wonder that the Coeur d'Alene leaders of today look upon the allotment system as a federal scheme to liquidate tribal holdings.

The widespread problem caused by the alienation of tribal lands reached such proportions that the Bureau of Indian Affairs was forced to

[29] U. S., *Statutes at Large,* 36 Stat. 855.

[30] *Interior Department Report, 1913,* 212.

[31] U. S., *Statutes at Large,* 43 Stat. 253.

[32] Joseph Garry interview.

[33] *Interior Department Report, 1913,* 212.

[34] United States Department of the Interior, *Reports of the Department of Interior for the Fiscal Year Ending June 30, 1919, Indian Affairs and Territories* (Washington, 1920), 171. Hereafter cited as *Interior Department Report, 1919.*

[35] Joseph Garry interview.

take steps to prevent further loss by the Indians. An honest attempt was made to establish a concrete method of determining an Indian's competency, and agents were advised to take all necessary steps possible to prevent the tribesmen from alienating their holdings. But as long as he could legally do so, the Indian continued to sell his land. Between the years of 1928 and 1933, fifty-three additional allotments were sold by the Coeur d'Alene at an average price of thirty-five dollars an acre.[36] By the latter year, the total holdings of the Coeur d'Alene Indians amounted to 62,400.64 acres, approximately 60 percent of the land awarded them in severalty some twenty-four years earlier.[37] Today the Coeur d'Alene can be heard to somewhat ruefully maintain that "The only competent Indian was the one who refused to accept a fee patent." [38]

The loss of land was not the only problem faced by the Coeur d'Alene as a result of the Dawes Act. Once the whites invaded the reservation, almost every semblance of tribal organization disappeared. The earlier position of the tribal chieftain had been that of a moral and spiritual leader who, with the advice and consent of an informal tribal council, also served as the guiding influence in economic and political affairs. But now, following the example of their white neighbors, the Coeur d'Alene soon came to look upon this control as unwarranted. The authority of the Catholic Church also came to be questioned, with many of the Indians withdrawing their allegiance at a time when its moral influence was probably most needed. Faced with heretofore unknown rebellion, it was not long before the tribal chieftainship became little more than an honorary title. The council, subjected to constant bickering, lost its importance and later ceased to exist.[39]

With the loss of tribal solidarity came the loss of pride in the tribal entity and establishments. No longer did censure by the group act as a constraint on individual conduct. Many refused to honor their debts, while others took to excessive drinking and gambling. The local police force and courts, administered by the government and staffed by tribal members operating from the sub-agency at Plummer, Idaho, worked overtime in enforcing laws and dispensing justice. Ignace Garry, an early chief of In-

[36] "Annual Report to the Commissioner of Indian Affairs," June 1933, North Idaho Indian Agency, Lapwai, Idaho. Hereafter cited as "Annual Report to the Commissioner of Indian Affairs."

[37] "Annual Report to the Commissioner of Indian Affairs."

[38] Joseph Garry interview.

[39] Joseph Garry interview.

dian police, vividly recalls the fights, "moonshining," and thievery that were prevalent on the reservation.[40] Trouble also developed when some of the more unscrupulous whites committed unlawful acts, knowing the Indians would be blamed.

Another problem that eventually caused an undesirable effect upon the Coeur d'Alene was the leasing of their lands to the area's white residents. The central and most important concept of the Dawes legislation had been to establish a program whereby the Indians of the United States would become industrious, independent farmers and ranchers. The Indians, however, had no sooner received their allotments when they were subjected to a barrage of offers to lease their lands. The Coeur d'Alene received the same propositions and in far too many instances accepted the offers. Opinion is divided as to why they were so willing to lease their lands. Some contend that the local Indian agents encouraged the tribesmen to lease their lands, while others candidly admit that it was easier to lease the soil than work it themselves.[41]

Regardless of the reason, the leasing of reservation lands had a strong adverse effect. Added to those who had sold their holdings, there was now another unemployed group — the absentee landlord who leased his land to the whites. By 1919 some 230 allotments totaling 33,240 acres were under lease, for which the Coeur d'Alene received $309,297 annually — an average of slightly more than $9.50 per acre.[42] The carefree life of those who leased their lands had great appeal to a majority of the tribe, for by the arrival of 1933 the Coeur d'Alene were leasing 45,120 of the 62,400 acres still owned by tribal members.[43]

If through no other method, the disastrous effects of the Dawes Act upon the Coeur d'Alene can be seen in land figures. Prior to its application, the tribe owned in excess of 400,000 acres. When the act passed out of existence, the Coeur d'Alene held 62,400 acres, of which only 17,280 acres were being directly worked by the tribe's members.

While the value of the Dawes Act was questioned in its earliest days, the opposition did not really begin to solidify until the 1920s. By that time many were beginning to strongly question the sagacity of the program. Consequently, a government task force under the leadership of Lewis

[40] Ignace Garry interview.

[41] Stanislaus Aripa interview; Ignace Garry interview.

[42] *Interior Department Report, 1919,* 119.

[43] "Annual Report to the Commissioner of Indian Affairs."

Meriam was organized in 1926 to undertake a comprehensive examination of Indian conditions in the United States. Completed in 1928, the Meriam report revealed some startling facts concerning the plight of the Indian and made some concrete recommendations concerning such things as law enforcement, education, and health and welfare. But of even more importance, the report questioned the wisdom of the Dawes Act.[44]

Additional studies were undertaken in the years following the release of the Meriam report. All local Indian agents were ordered to conduct surveys and report their findings to Washington. From all parts of the nation came negative reports on the effectiveness of the Dawes Act. The superintendent of the North Idaho Indian Agency at Lapwai explained that in his view the act had changed the productive, enterprising Coeur d'Alene Indians into an idle, nonproductive people.[45]

With the profusion of such comments streaming into the Bureau of Indian Affairs, Commissioner John Collier went before the members of the House and Senate committees on Indian affairs in February 1934 with the warning that two-thirds of the American Indians were on the verge of impoverishment.[46] To combat this, he asked that a program be undertaken to correct the situation. After much deliberation, the result was the passage of the Indian Reorganization Act, more commonly known as the Wheeler-Howard Act.[47]

This new legislation, designed to reestablish tribal governments, create tribal business corporations, and maintain the Indians' disappearing culture, appeared to be the panacea for the settlement of the then current Indian problems. The act also stated that the legislation would not be applied to any reservation wherein a majority of the tribe voted against its application. On November 17, 1934, the Coeur d'Alene went to the polls and by a slim margin rejected the Wheeler-Howard Act. In refusing the only comprehensive Indian legislation undertaken in the period between 1887 and 1934, the Coeur d'Alene committed a most costly error in the history of their relationship with the government. It was an error that would be very difficult to overcome in the years ahead.

[44] Lewis Meriam et al., *The Problem of Indian Administration* (Baltimore, 1928).

[45] "Annual Report to the Commissioner of Indian Affairs."

[46] John Collier, *The Purpose and Operation of the Wheeler-Howard Indian Rights Bill, A Memorandum of Explanation Respectfully Submitted to the Members of the Senate and House Committee on Indian Affairs* (Washington, 1934), 4.

[47] U. S., *Statutes at Large,* 48 Stat. 988.

# Exhibit 19

to

Affidavit of Steven W. Strack

accompanying

State of Idaho's Memorandum in Support of
Motion for Summary Judgment

CSRBA Consolidated Subcase No. 91-7755

STATE BOARD OF LAND COMMISSIONERS
December 13, 1988

SUBJECT

Proposed settlement agreement between State of Idaho, Templins and Washington Water Power Company relating to the Post Falls hydroelectric facility on the Spokane River.

BACKGROUND

This subject was originally before the Board on January 13, 1987 where it was discussed in an executive session relating to the Templin/Louisiana Pacific lawsuit issue.

DISCUSSION

Pat Kole will lead the discussion regarding the background and purpose of the settlement agreement. The attached draft is the culmination of two years of continuing negotiations between the parties.

RECOMMENDATION

That the proposed settlement agreement be approved.

BOARD ACTION

Approved DEC 13 1988

ATTACHMENTS

1) Settlement Agreement
2) Plat of Area Subject to the Agreement

SETTLEMENT AGREEMENT, RELEASE, EASEMENT, AND RIGHTS BETWEEN THE STATE OF IDAHO, TEMPLINS AND WWP

The following Settlement Agreement and Release (hereinafter referred to as "Agreement") is entered into by and between The Washington Water Power Company (hereafter referred to as WWP), the State of Idaho, and the "Templins" comprised of Templin's Resort and Conference Center, Inc., Robert Templin and Mary Templin, as a full and complete settlement of the disputes between them.

W I T N E S S E T H:

WHEREAS, in 1871, the Coeur d'Alene Tribe of Indians entered into an agreement with Frederick Post for Mr. Post to acquire the property and rights related to the development of water power at the falls on the Spokane River located at or near the City of Post Falls, Idaho; and

WHEREAS, in 1889, the Coeur d'Alene Tribe of Indians entered into a written agreement with Frederick Post, which purported to ratify the prior 1871 agreement; and

WHEREAS, the State of Idaho, upon admission to the Union in 1890, gained title to the beds of all navigable bodies of water pursuant to the equal footing doctrine (including the beds of the Spokane River beneath the navigable portions), which had not been previously conveyed pursuant to an act of Congress under a special duty or public exigency; and

WHEREAS, the United States Congress made the 1889 written agreement between the Coeur d'Alene Tribe of Indians and Frederick Post a part of Section 22 of the Indian Appropriations Act of March 3, 1891; and

WHEREAS, property associated with the water power at the falls at or near Post Falls, Idaho, was surveyed by government

surveyors and a patent was issued by the United States to Frederick Post, dated September 5, 1894, (hereinafter referred to as "Post Patent") which is recorded in the records of the Kootenai County Recorder in Vol. 20 at pages 433-436 and Book L of Deeds at page 623; and

WHEREAS, a dispute exists as to whether the agreement between Post and the Coeur d'Alene Tribe conveyed bedlands lying below the ordinary high water mark because the agreement was not ratified by Congress prior to the admission of the State of Idaho into the Union; and

WHEREAS, WWP has acquired, by various conveyances, rights described in the Post Patent; and

WHEREAS, WWP has constructed a hydroelectric project in connection with the development of the water power granted under the Post Patent; and

WHEREAS, on and before July 3, 1890, a portion of the Spokane River and its bed between Post Falls and Coeur d'Alene Lake was used for the transportation and storage of logs and had pilings placed in such bed at various locations along the right bank in Section 3, Township 50 north Range 5 west, Boise Meridian (generally along the Templin frontage and to the Post Falls bridge); and

WHEREAS, the State of Idaho claims sovereignty, ownership and control over all of the navigable waters of the State of Idaho, including the Spokane River; and

WHEREAS, the State's claim conflicts with the conveyance purportedly made by the Coeur d'Alene Tribe of Indians and made by the Post Patent issued in 1894; and

WHEREAS, WWP has claimed all of the river bedlands and the uplands in the area described in the Post Patent in the matter now pending before the First Judicial District of the State of Idaho in and for the County of Kootenai in Cause No. 66937 (Templin's Resort and Conference Center, Inc., et al. v. Louisiana-Pacific Corporation, et al.); and

WHEREAS, Templins claim that they own certain lands described in the attached Exhibit A, (including riparian and

littoral rights) along the Spokane River, which claims conflict with the claims of the State of Idaho and WWP, with respect to the location of boundaries; and

WHEREAS, WWP claims that any riparian and littoral rights appurtenant to real property owned by Templins were previously severed by conveyances by Frederick Post and his wife Margaret (hereinafter the Posts), when the Posts had record title to upland and bedland along the Spokane River and when the Posts conveyed certain lands and rights to WWP's predecessors in interest; and

WHEREAS, WWP has constructed a hydroelectric project on the Spokane River at Post Falls, Idaho, which is hereafter called the "Post Falls Development;" the Post Falls Development includes, without limit, dams, powerhouse, turbines and generators, all electrical facilities, a reservoir and all other equipment and facilities used in connection with the Post Falls Development; the reservoir consists of the Spokane River, Lake Coeur d'Alene, the Coeur d'Alene River, the St. Joe River, the St. Maries River, and contiguous or connected tributary waters, which reservoir is formed by holding Lake Coeur d'Alene up to an elevation of 2,128 feet above mean sea level as measured by the Lake Coeur d'Alene USGS water gage; and

WHEREAS, during most of each year as part of WWP's operation of the Post Falls Development, WWP controls and maintains the water surface elevations of the Spokane River and Coeur d'Alene Lake at and below 2,128 feet above mean sea level as measured by reference to the United States Geological Survey gage at Coeur d'Alene Lake and as described in Section 2 of this Agreement, which control by WWP affects the water surface and elevation of the St. Joe River, the St. Maries River and the Coeur d'Alene River and the other tributary waters connected to the Spokane River and Lake Coeur d'Alene; and

WHEREAS, WWP asserts that the Spokane River located within the area described in the Post Patent lying west of the west

boundary of the east half (E½) of the east half (E½) of the southwest quarter (SW¼) of Section 3, Township 50 North, Range 5 West B.M. in Kootenai County, Idaho, (hereinafter called the "Line of Navigation") and east of the west boundary of the lands described in the Post Patent was not on July 3, 1890, and is not a navigable water of the State of Idaho; and

WHEREAS, WWP asserts that the property on which WWP's dams and powerhouse and other facilities constructed in connection with WWP's Post Falls Development on or over the Spokane River within the area described in the Post Patent west of the Line of Navigation and east of the west boundary of the lands described in the Post Patent is not located on or over navigable waters of the State of Idaho; and

WHEREAS, WWP claims a right to construct, reconstruct, operate and maintain WWP's Post Falls Development on the Spokane River in the area conveyed under the Post Patent with WWP's rights arising, in part, under the Post Patent as now owned by WWP and under the Constitution of the State of Idaho relating to water rights; and

WHEREAS, the State asserts that a waterfall does not make the Spokane River non-navigable; and

WHEREAS, the natural or ordinary high water mark along the Spokane River has never been established; and

WHEREAS, the claims of WWP, the Templins and the State of Idaho are in conflict and a genuine dispute and controversy exists; and

WHEREAS, WWP, the State of Idaho and Templins desire to avoid any dispute of ownership and dominion or control of the uplands and bedlands along the Spokane River which are included in and described in the Post Patent and in Templin's Complaint in Cause No. 66937 and to resolve their respective claims by settlement and compromise.

NOW, THEREFORE, these parties agree to settle, resolve, and compromise their claims with respect the lands described herein under the following terms and conditions.

1. Subject to the reservation by WWP of an overflow easement and the terms and conditions of this Agreement, effective upon the effective date of this Agreement, WWP disclaims any and all right, title or interest in the three parcels of property described in the attached Exhibit A which may be above the natural or ordinary high water mark when the State of Idaho was admitted into the Union.

2. WWP reserves the right to operate the Post Falls Development so as to produce electrical energy at WWP's Post Falls Development from flowing and stored waters and to regulate, maintain and control the surface elevation of Coeur d'Alene Lake at and below an elevation of 2,128 feet above mean sea level (msl) as measured by the United States Geological Survey (USGS) water gage at Lake Coeur d'Alene (gage reading of 0.00 equals 2100.00 msl), which is referenced to a USGS bench mark at the southeast corner of the former Merriam building having an original elevation of 2,157.404 feet. The USGS gage elevations which are referenced throughout this document minus 3.05 feet equals the current datum of the National Oceanic and Atomspheric Administration (hereinafter referred to as NOAA) of the U. S. Department of Commerce. NOAA was formerly the U.S. Coast and Geodetic Survey.

3. Templins grant to WWP, and WWP reserves, a perpetual overflow easement to overflow those portions of the lands described in Exhibit A to the extent and as may occur when WWP controls the water surface elevation of the Spokane River upstream from the Post Falls Development so as to regulate, maintain and control the water surface elevation of Lake Coeur d'Alene at and below 2,128 feet above mean sea level as measured by the United States Geological Survey (USGS) water gage at Lake Coeur d'Alene. Templins acknowledge that WWP has the right, title and interest necessary for the continued operation and maintenance of the Post Falls Development so as to control the water surface elevation of Coeur d'Alene Lake and the Spokane River at and below an elevation of 2,128 feet above mean sea level as measured by the USGS water gage at Coeur d'Alene, Idaho.

Templins shall have the right to make use of the property lying below elevation 2,128 feet above mean sea level subject to the perpetual overflow easement granted to and reserved by WWP and subject to the other terms and conditions of this Agreement, including, but not limited to, Sections 11 and 22.

4. Neither Templins nor WWP admit the claim of the other with respect to riparian or littoral rights. The foregoing notwithstanding, WWP consents to Templin's use of contiguous bedlands in front of the property described in Exhibit A for any and all other purposes including, but not limited to, the right to wharf out and to construct facilities necessary and associated with boating, navigation and other related uses of the Spokane River such as the installation and maintenance of pilings, log storage areas, docks, decks, boat houses or other buildings, marinas, breakwaters, retaining walls, recreational activities, commercial enterprises and all other uses which do not materially restrict the flow of the Spokane River or materially reduce the storage capacity of the reservoir of WWP's Post Falls Development. WWP consents to Templin's access to the navigable waters of the Spokane River for purposes of navigation, fishing and related uses. As part of the consideration from WWP for the easement granted to and reserved by WWP in Section 3, WWP consents, without additional compensation, to the above uses which are deemed by WWP to be reasonable uses within the meaning of Article 14 of the WWP's Federal Energy Regulatory Commission license for the Post Falls Development (Project 2545).

5. This agreement is made without regard to the navigability or non-navigability of the Spokane River as of the date of the State of Idaho's admission to the Union or as to the location of the line of ordinary high water of the river under natural or artificial circumstances. The parties hereto agree that except as to Washington Water Power Co v. FERC, 775 F.2d 305 (D.C. Cir. 1985), there has been no determination as to the navigability or non-navigability of the Spokane River or as to the location of the natural or ordinary high water mark of the Spokane River under either natural or artificial conditions. However, the State administers and regulates the Spokane River as a navigable body of water.

6. The disclaimer of interest by WWP in Section 1 above is made with the understanding that Templins and WWP shall request the Court in Kootenai #66937 to quiet title to the property described in Exhibit A including the various rights granted or recognized by the parties as set forth herein. WWP and Templins agree that the title quieted in the Templins shall be subject to the overflow easement granted to and reserved by WWP in this Agreement. WWP and Templins agree that title be so quieted, and that thereafter all claims each party may have against any other party in Kootenai #66937 may be dismissed with prejudice with each party bearing their own costs and attorney fees.

7. Subject to the rights and interests retained by WWP herein and the other terms and conditions of this Agreement, effective upon the effective date of this Agreement, WWP hereby disclaims any and all right, title or interest in the bed of the Spokane River lying within the area described in the Post Patent lying below the natural or ordinary high water mark.

8. The State of Idaho, through the Board of Land Commissioners pursuant to Title 1, Chapter 58 of the Idaho Code and the rules and regulations adopted pursuant thereto, grants and confirms to The Washington Water Power Company, a corporation organized under the laws of the Territory and State of Washington which is qualified to do and is doing business in the State of Idaho, an easement for the perpetual right to occupy and use the following described parcel:

> that part of the Spokane River lying below the natural or ordinary high water mark under natural conditions lying within the area described in the Post Patent lying west of the west boundary of the east half (E½) of the east half (E½) of the southwest quarter (SW¼) of Section 3, Township 50 North, Range 5 West B.M. in Kootenai County, Idaho, (hereinafter called the "Line of Navigation") and east of the west boundary of the area described in the Post Patent, together with water rights and other rights appurtenant thereto

for the purpose of constructing, reconstructing, operating and maintaining the Post Falls Development (including, without limit, dams, powerhouse, turbines and generators, all electrical facilities, reservoir on the Spokane River and waters tributary

thereto, which reservoir results from holding the elevation of Lake Coeur d'Alene at and below 2,128 feet above mean sea level as measured by the Lake Coeur d'Alene USGS water gage, and all other equipment and facilities used in connection with the Post Falls Development) in accordance with the laws of the United States and the State of Idaho. Said easement shall remain in effect so long as WWP has a valid federal license or right to operate the Post Falls Development. WWP may, as a condition of this easement, regulate or restrict public access to the bed of the Spokane River in the area described in the Post Patent lying west of the Line of Navigation as may be needed to protect the public health, safety and welfare. This easement does not limit or otherwise affect WWP's construction, reconstruction, operation or maintenance of its Post Falls Development.

9. The State of Idaho has not and shall not impose any charge or fee with respect to WWP's construction, reconstruction, operation or maintenance of WWP's Post Falls Development as described in this Agreement and as described in the application to the Federal Energy Regulatory Commission (FERC) to amend the license for Project No. 2545 to include the Post Falls Development and as described in the FERC order for Project No. 2545 [See 16 FERC ¶62096]. The application to amend the license included exhibits which were submitted to and/or approved by the FERC.

10. The State of Idaho acknowledges that WWP's construction and operation of its Post Falls Development has improved the navigability and the public's access to, and usage of, the Spokane River, Coeur d'Alene Lake, the Coeur d'Alene River, the St. Joe River, and the St. Maries River and other connected and tributary waters. The State of Idaho acknowledges that this settlement is clearly in the public interest and is consistent with the Public Trust Doctrine as set forth in Kootenai Environment Alliance v. Panhandle Yacht Club, 105 Idaho 622 (1983) and other applicable law.

11. The Land Board acknowledges and shall not object to WWP's right to construct, reconstruct, operate, and maintain the

Post Falls Development and all of the structures and facilities associated therewith, including the right to control the water surface elevation of the Spokane River upstream from the Post Falls Development and to regulate, maintain and control the water surface elevation of Coeur d'Alene Lake at and below 2128 feet above mean sea level as measured by the United States Geological Survey water gage at Coeur d'Alene Lake, which is referenced to the U.S.G.S., B.M., at the SE corner of the former Merriam Building having an original elevation of 2157.404 (datum shown minus 3.05 feet equals NGS). Such regulation and control of the water surface elevation on Lake Coeur d'Alene affects the water surface elevation of connected and tributary waters, including the Coeur d'Alene River, the St. Joe River, the St. Maries River and other connected and tributary waters. The State of Idaho retains such authority as it may have to review and regulate WWP's activities.

12. WWP shall continue to have the right to construct those facilities within the area described by the Post Patent lying between the west boundary of the Post Patent and the west boundary of the southeast quarter of Section 3, Township 50 North, Range 5 West B.M., as may be necessary or appropriate in connection with the operation of the Post Falls Development considering such factors as public safety, prudent utility operations, and the protection of WWP's property. Such facilities may include, without limitation, log booms and apparatus for the collection and removal of floating debris, safety lines to prevent members of the public and property from going through the spillgates located at the dams, and other similar facilities. The State of Idaho retains such authority as it may have to review and regulate WWP's activities.

13. This is a settlement and compromise of a dispute between the parties. The parties shall dismiss, with prejudice, all claims they have made or could have made as against each other with respect to the subject matter of this Settlement Agreement in the Kootenai County District Court Case No. 66937. No costs or attorney's fees shall be awarded to any party. WWP

agrees that it will not contest the claim of the State of Idaho to the bed of the Spokane River below the natural or ordinary high water mark in any other litigation or proceeding in which the State of Idaho is a party, except where another person not a party to the Agreement is making a claim against WWP with respect to the operation of the Post Falls Development; provided, however, this Agreement does not resolve and shall not be construed to affect the claims of these parties with respect to any other person.

14. The parties agree to execute such documents as may be necessary to facilitate the intentions of the parties hereto.

15. This is a full compromise of all disputed claims and the consideration set out herein is not to be construed as an admission of liability on the part of any party.

16. This Agreement shall bind the parties hereto and their heirs, successors and assigns. The rights and obligations set out herein shall run with the land now owned by the parties hereto.

17. Templins hereby release and waive any claim they may have now or in the future against WWP arising out of the subject matter of the litigation in Court in Kootenai County Cause or Docket No. 66937, including, without limitation, any claim arising out of WWP's regulation, maintenance, or control of the water surface of the Spokane River and Lake Coeur d'Alene at and below elevation 2,128 feet above mean sea level as measured by the USGS Lake Coeur d'Alene water gage.

18. If, for any reason, any part of this Agreement is determined to be invalid by a final decision of a court of competent jurisdiction, this Agreement shall be null and void ab initio and the parties shall be returned to their original positions. The parties hereto shall not take any action which shall cause such invalidity.

19. This is a settlement and compromise agreement between the parties hereto. By entering into this Agreement, the parties are not admitting the validity of the claims of the other parties. This Agreement shall constitute a full and complete

satisfaction of all claims that have been made or could be made in Cause No. 66937 in the First Judicial District of the State of Idaho in and for the County of Kootenai. The parties hereto release forever all claims which the parties may have now or in the future against each other with respect to the property described in this Agreement relating only to the claims described in this agreement, and the operation of the Post Falls Development as set forth herein.

20. This Agreement shall not be construed to affect any claims of these parties as against any person other than these parties. However, any party hereto may assert any right, title or interest agreed or acknowledged herein against any other person. "Person" shall mean all individuals, organizations, corporations, governmental bodies or entities and any entity that may sue or be sued.

21. For the purpose of this Agreement only, the parties hereto agree that the natural or ordinary high water mark along the property described in the attached Exhibit A is at an elevation of 2,124 feet above mean sea level as measured by reference to the USGS water gage for Lake Coeur d'Alene.

22. The State of Idaho agrees that it will not charge any fee for occupancy of the shore along the Spokane River on the river side of the property described in Exhibit A above the natural or ordinary high water mark which for purposes of this agreement only is at elevation 2,124 feet above mean sea level as measured by reference to the elevations of the USGS water gage for Lake Coeur d'Alene. (USGS gage elevation minus 3.05 feet equals NOAA elevations.) However, construction of facilities below USGS water gage elevation 2,128 feet above mean sea level shall be subject to regulation or approval under Idaho and federal law to the extent such law is applicable.

23. This Agreement is binding and effective so long as: all of the necessary regulatory approvals are obtained; an appropriate Order approving this settlement has been issued by the Idaho Board of Land Commissioners; this Settlement Agreement is filed and a decree approving this settlement has been entered

by the Court in Case No. 66937 in the First Judicial District of the State of Idaho in and for the County of Kootenai; and this Settlement Agreement is likewise filed in the Kootenai County Recorder's Office. The parties shall take immediate action to seek and obtain those approvals that may be necessary.

Robert G. Templin 11-14-88
ROBERT G. TEMPLIN / Date

Mary Templin 11-14-88
MARY TEMPLIN / Date

TEMPLIN'S RESORT AND CONFERENCE CENTER, INC.

By Robert G. Templin
ROBERT G. TEMPLIN
Its Pres.

11-14-88
Date

THE WASHINGTON WATER POWER COMPANY

Paul A. Redmond
Paul A. Redmond
Chairman of the Board and
Chief Executive Officer

Nov. 14, 1988

THE STATE OF IDAHO ACTING THROUGH THE STATE BOARD OF LAND COMMISSIONERS

By _____
Governor of the State of Idaho and President of State Board of Land Commissioners

COUNTERSIGNED

By _____
Secretary of the State of the State of Idaho

By _____
Director, Department of Lands

STATE OF IDAHO )
) ss.
County of Kootenai )

I certify that I know or have satisfactory evidence that ROBERT G. TEMPLIN and MARY TEMPLIN, husband and wife, signed this instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

Dated Nov. 14, 1988

Sarah Sue Skerrett
Notary Public in and for the State of Idaho, residing at
My commission expires 5/21/91

STATE OF IDAHO )
) ss.
County of Kootenai )

I certify that I know or have satisfactory evidence that ROBERT G. TEMPLIN signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the PRES of TEMPLIN'S RESORT & CONFERENCE CENTER, INC. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated Nov. 14, 1988

Sarah Sue Skerrett
Notary Public in and for the State of Idaho, residing at
My appointment expires 5-21-91

STATE OF WASHINGTON )
) ss.
County of Spokane )

I certify that I know or have satisfactory evidence that PAUL A. REDMOND, signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Chairman of the Board and Chief Executive Officer of THE WASHINGTON WATER POWER COMPANY to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated 11/14/88

Donna Ashley
Notary Public in and for the State of Washington, residing at Spokane
My appointment expires 11/17/88

STATE OF IDAHO )
) ss.
County of Ada )

On this _____ day of _____, 1988, before me, a Notary Public in and for the State, personally appeared CECIL D. ANDRUS, known to me to be the Governor of the State of Idaho, and PETE T. CENARRUSA, known to me to be the Secretary of the State of Idaho, and STANLEY F. HAMILTON, known to me to be the Director, Department of Lands of the State of Idaho, who executed said instrument and acknowledged to me that such State of Idaho executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year last above written.

_____
Notary Public for Idaho
Residing at _____
My Commission Expires: _____

TMPLN1/10

EXHIBIT A

LANDS CLAIMED BY TEMPLIN

TRACT 1

Tract 1 in the Southeast Quarter of Section 3, Township 50 North, Range 5 W.B.M., Kootenai County, State of Idaho, according to the plat of the Heirs of Margaret Post Estate more particularly described as: commencing at the Southeast corner of said Section 3; thence North, 1592.2 ft. along the East boundary of Lot 5; thence West, 1399.10 ft. along the South boundary of First Street and the North boundary of Lots 5, 4, 3 and 2 of said plat to the POINT OF BEGINNING; thence continuing West 544 ft. along the North boundary of Lot 1 of said plat; thence South 548.1 ft. along the West boundary of said Lot 1 to a point on the right bank of the Spokane River; thence southeasterly along the right bank of the Spokane River, approximately 778 ft.; thence North, 1086 ft. along the East boundary of said Lot 1 of said plat to the POINT OF BEGINNING.

TRACT 2

Tract 2 in the Southeast Quarter of Section 3, Township 50 North, Range 5 W.B.M., Kootenai County, State of Idaho, according to the plat of the Heirs of the Margaret Post Estate more particularly described as: commencing at the southeast corner of said Section 3; thence North 1592.2 ft. along the East boundary of Lot 5 of said plat; thence West 1057.10 ft. along the South boundary of First Street and the North boundary of Lots 5, 4 and 3 of said plat to the POINT OF BEGINNING: thence continuing West, 342 ft. along the North boundary of Lot 2; thence South, 1086 ft. along the West boundary of said Lot 2 of said plat to a point on the right bank of the Spokane River; thence southeasterly along the right bank of the Spokane River, approximately 569 ft.; thence North 1509 ft. along the East boundary of said Lot 2 of said plat to the POINT OF BEGINNING.

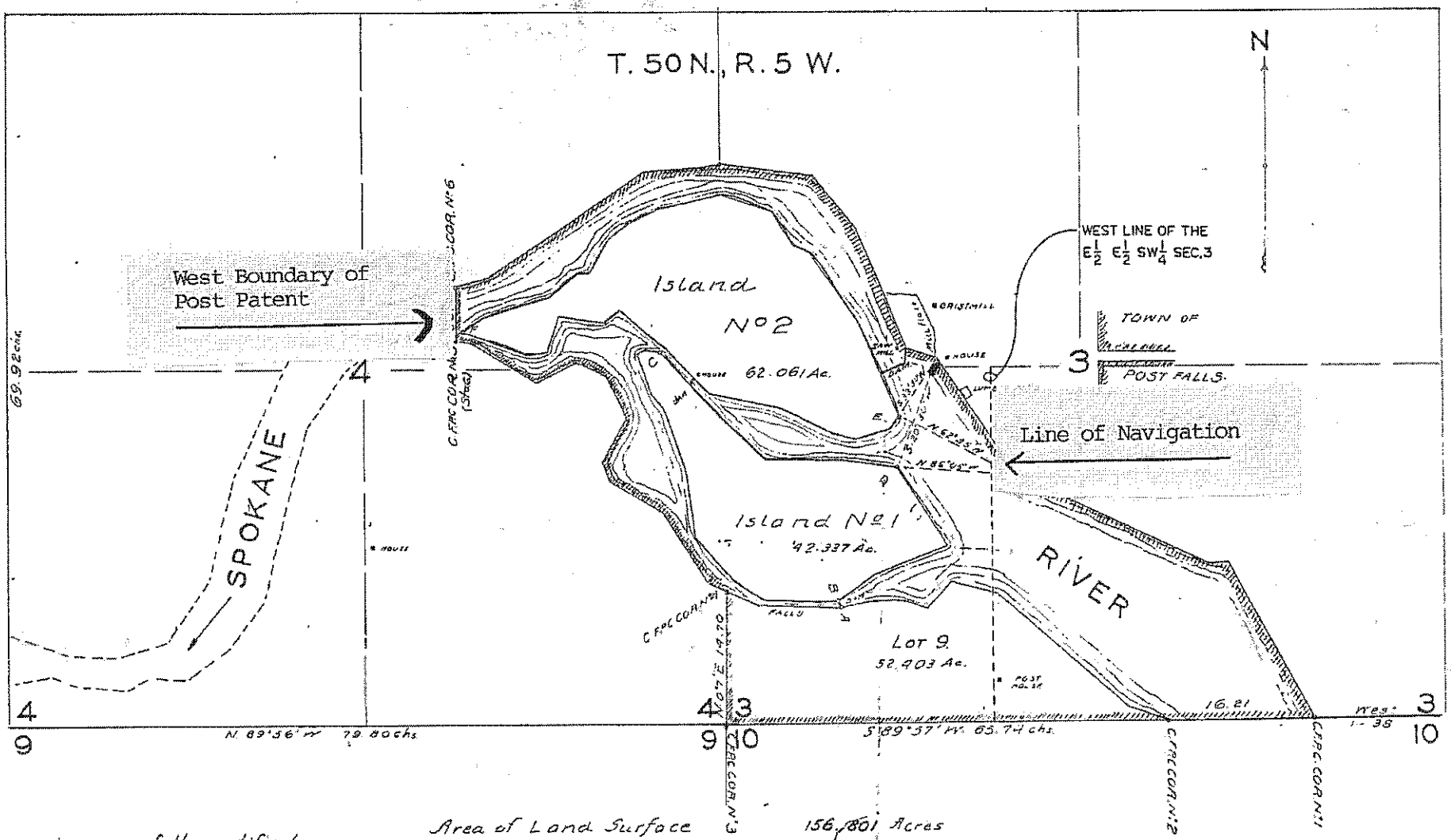
Templin Home

That part of Section 2, Township 50 North, Range 5 West of the Boise Meridian, Kootenai County, Idaho, more particularly described as follows:

BEGINNING at the center point of vacated Hazel Street, which is 50 feet South of the Southwest corner of Block 11, of FORD'S ADDITION TO THE CITY OF POST FALLS; thence, East 300 feet; thence North 50 feet to the Southeast corner of Block 11; thence East 220 feet; thence approximately South 13° East to the Spokane River; thence, following the North bank of the Spokane River to a point 800 feet East of the Section line between Section 2 and 3 of said Township and Range; thence, North to a point 2,160 feet South of the North line of the Southwest Quarter and 800 feet East of the West line of said Section 2; thence, North 88°31'50" West, 109.63 feet to a point on a rock; thence,North 58°12'50" West, 152.98 feet to a rod set at the end of a rock wall; thence, South 69°39'29" West, 149.58 feet to a point on the face of a rock cliff; thence, South 89°59'50" West, 79.75 feet to the East line of said Block 11, 2 feet South of the Northeast corner of Lot 10 of said Block 11; thence, West parallel with the North line of said Lot 10, 300 feet to the West line of said Block 11; thence, South to the POINT OF BEGINNING.

# PLAT
## OF THE
## CONFIRMED CLAIM OF FREDERICK POST
## IN
## T. 50 N., R. 5 W., BOISE MER.

Scale 10 chains = 1 inch.




| | | |
|---|---|---|
| Area of Land Surface | | 156.801 Acres |
| " " Water | | 141.593 " |
| Total Area of Claim | | 298.394 Acres |

This map is a copy of the certified copy of plat of Confirmed Claim of Frederick Post Certified by Virgil W. Somers, U.S. Surveyor General, at Boise, Idaho, Oct. 4, 1923

ATTACHMENT #2

# Exhibit 20

to

Affidavit of Steven W. Strack

accompanying

State of Idaho's Memorandum in Support of
Motion for Summary Judgment

CSRBA Consolidated Subcase No. 91-7755

COPY

LOIS J. SCHIFFER
Acting Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

BETTY RICHARDSON
United States Attorney, District of Idaho
First Interstate Center
877 West Main Street, Suite 201
Boise, Idaho 83702
(208) 334-1211

HANK MESHORER
Chief, Indian Resources Section
Environment and Natural Resources Division
United States Department of Justice
P. O. Box 44378
L'Enfant Plaza Station
Washington, D.C. 29926-4378
TEL: (202) 272-4111
FAX: (202) 272-4471

Attorneys for Plaintiff,
UNITED STATES OF AMERICA



UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF IDAHO

In re suit to quiet title to that portion of the bed and banks of Coeur d'Alene Lake and St. Joe River lying within the exterior boundaries of the 1873 Coeur d'Alene Reservation

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

STATE OF IDAHO,

Defendant.

CIV 94-0328-N-EJL

CASE NO. _____

## COMPLAINT TO QUIET TITLE

COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through its attorney, Hank Meshorer, United States Department of Justice, acting under the authority of the Attorney General of the United States, and, at the request of the Department of the Interior, herewith files its complaint, alleging and stating as follows:

I PRELIMINARY STATEMENT

1. This is a civil action by the United States to quiet title to that portion of the bed and banks of the Coeur d'Alene Lake (hereinafter "Lake"), and the St. Joe River laying within the exterior boundaries of the 1873 Coeur d'Alene Indian Reservation for the use and benefit of the Coeur d'Alene Tribe (hereinafter "Tribe"). The complaint also seeks a declaration that the defendant has no rights or interest in said bed and banks, as well as an injunction barring the defendant from asserting any right or title to said bed and banks.

II. JURISDICTION AND VENUE

2. The United States is plaintiff in this action. This court has jurisdiction under 28 U.S.C.§§ 1345, 1331 and 2202-2202.

3. The land at issue is located in Kootenai and Benewah Counties, Idaho. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and Local Rules of the United States District Court for the District of Idaho, Rule 3.2, Northern Calendar.

III. PARTIES

4. The plaintiff, UNITED STATES OF AMERICA, brings this action in its own capacity and as trustee for the benefit of the Coeur d'Alene Tribe of Idaho and its Individual Members.

5. The defendant, STATE OF IDAHO, is one of the 50 states within whose exterior boundary is located the Coeur d'Alene Indian Reservation and the beds and banks at issue herein.

IV. GENERAL ALLEGATIONS

6. By virtue of the Treaty with Great Britain in 1846, 9 Stat. 869, the United States purchased from Great Britain the Oregon Territory, which included the beds and banks at issue herein.

7. In 1863 the United States Congress established the Territory of Idaho, but specifically exempted all Indian territory from the Territory of Idaho. 12 Stat. 808, ch. 117.

8. On November 8, 1873, by Executive Order, the Coeur d'Alene Indian Reservation was established within the aboriginal homeland of the Coeur d'Alene Tribe as follows:

> It is hereby ordered that the following tract of country in the Territory of Idaho be, and the same is hereby, withdrawn from sale and set apart as a reservation for the Coeur d'Alene Indians, in said Territory, viz: Beginning at a point on the top of the dividing ridge between Pine and Latah (or Hangman's) Creeks, directly south of a point on said last-named creek, 6 miles above the point where the trail from Lewiston to Spokane Bridge crosses said creek; thence in a northeasterly direction in a direct line to the Coeur d'Alene Mission, on the Coeur d'Alene River (but not to include the lands of said mission); thence in a westerly direction, in a direct line, to the point where the Spokane River heads in, or leaves the Coeur d'Alene Lakes; thence down along the center of the channel of said Spokane River to the dividing line between the Territories of Idaho and

> Washington, as established by the act of Congress organizing a Territorial government for the Territory of Idaho; thence south along said dividing line to the top of the dividing ridge between Pine and Latah (or Hangman's) Creek; thence along the top of said ridge to the place of beginning.

All of Coeur d'Alene Lake and the St. Joe River were thus included within the 1873 reservation except for small portions of the Lake where the northern shoreline meandered across the direct line from the Coeur d'Alene Mission to the source of the Spokane River. See attached map (Exhibit 1), which by this reference is incorporated as if set forth verbatim herein.

9. In 1889, the Coeur d'Alene Tribe ceded to the United States the approximate northern one-third of the 1873 Reservation, including approximately the northern two-thirds of the Lake. The 1889 cession agreement described the new reservation's boundaries as follows:

> Beginning at the northeast corner of the said reservation, thence running along the north boundary line north 67 29' west to the head of the Spokane River to the northwest boundary corner of the said reservation; thence south along the Washington Territory line twelve miles; thence southerly along west shore of the Coeur d'Alene Lake; thence southerly along the west shore of said lake to a point due west of the mouth of the Coeur d'Alene River where it empties into the said lake; thence in a due east line until it intersects with the eastern boundary of the said reservation; thence northerly along the said east boundary line to the place of beginning.

26 Stat. 1030 (1891). See attached map (Exhibit 1).

10. In 1894, the Tribe ceded to the United States a one-mile strip of land known as the "Harrison Strip," as follows:

> Beginning at a point on the north line of the reservation, on the east bank of the mouth of the Coeur d'Alene River, and running due south one mile, thence due east parallel with the north line to the east boundary line, thence north on the east boundary line to the northeast corner of the reservation, thence west on the north boundary line to the point of beginning.

Act of August 15, 1894, ch. 290, 28 Stat. 322. Such cession slightly altered the above-noted 1889 Reservation boundary across the lake. See attached map (Exhibit 1).

11. In 1908, the United States withdrew from allotment and settlement and reserved certain lands approximate to the southern extreme of the Lake and now known as "Heyburn State Park," as follows:

> Sections one, two and twelve, township forty-six north range four west, Boise meridian; sections thirty-five and thirty-six, township forty-seven north, range four west, Boise meridian; all of those portions of sections two, three, four, five, six, seven, eight, nine, ten, and eleven, township forty-six north, range three west, Boise meridian, lying south and west of the Saint Joe River in said township; all of those portions of sections thirty-one and thirty-two, township forty-seven north, range three west, Boise meridian, lying south and west of the Saint Joe River in said township.

35 Stat. 79. See attached map (Exhibit 1).

12. By virtue of the above-described 1889 and 1894 cession agreements and the 1908 withdrawal and reservation, however, the Coeur d'Alene Tribe did not at any time cede to the United States any of those portions of the bed and banks of the approximate southern one-third of the Lake or of the St. Joe River still remaining within the Coeur d'Alene 1873 Reservation. Such remaining bed and banks are still held in trust by the United States for the benefit of the Coeur d'Alene Indian Tribe.

13. The Coeur d'Alene Tribe and its members are now in possession of those portions of the said bed and banks in question located within the Coeur d'Alene Indian Reservation, which include the bed and banks of the approximate southern one-third of the Lake as well as certain portions of the St. Joe River.

14. By virtue of the Idaho Admission Bill the defendant was admitted to the Union in 1890. Idaho Admission Bill § 1 (1890). 26 Stat. 215. Such Admission Bill accepted and ratified the fact that Article XXI, Section 19 of Idaho's Constitution disclaimed all right and title to lands owned or held by any Indians or Indian tribes located within its borders.

15. The defendant is claiming some right, title or interest to all of the beds and banks of the navigable waterways within its state, including the subject bed and banks, and is also asserting the right to possession of those lands. See Idaho Code § 58-1304 (formerly Idaho Code § 58-142). The claims of the defendant are null and void and of no effect.

16. The construction of docks, piers, float, pilings, breakwaters, boat ramps and other such aids to navigation upon the beds of navigable lakes is permitted in Idaho only upon the payment of fees to the defendant. See Idaho Code, § 58-1307 (formerly Idaho Code § 58-148).

17. Pursuant to Idaho Code, § 58-1306 (formerly Idaho Code § 58-147) the defendant, without the permission or consent of the United States or the Tribe, has approved and issued permits for

the construction of docks, piers, floats, pilings, breakwaters, boat ramps and other such aids to navigation within the southern one-third of Coeur d'Alene Lake.

18. The plaintiff, on behalf of the Coeur d'Alene Tribe, is entitled to a judgment: (1) quieting its title to the bed and banks of the approximate southern one-third of Coeur d'Alene Lake as well as those portions of the bed and banks of the St. Joe River located within the Coeur d'Alene Reservation, to be held for the use and benefit of the Coeur d'Alene Tribe and its members; (2) upholding the right of possession of the Coeur d'Alene Tribe and its members to those lands, and (3) declaring that the defendants have no right to title or interest in such lands and no right of possession thereof.

19. The plaintiff and the Coeur d'Alene Tribe will continue to suffer irreparable injury unless judgment is entered by this court upholding their title and right to possession of the bed and banks of the approximate southern one-third of Coeur d'Alene Lake as well as those portions of the bed and banks of the St. Joe River situate within the Coeur d'Alene Indian Reservation. The Plaintiff has no other adequate remedy at law.

WHEREFORE, the plaintiff, on behalf of the Coeur d'Alene Tribe prays that this court enter judgment and decree as follows:

(1) Quieting the title of the United States to the bed and banks of the approximate southern one-third of Coeur d'Alene Lake as well as those portions of the bed and banks of the St.

Joe River located within the 1873 Coeur d'Alene Indian Reservation for the use and benefit of the Coeur d'Alene Tribe;

(2) Declaring that the plaintiff, as trustee and for the benefit and use of the Tribe, are entitled to the exclusive use, occupancy and right to the quiet enjoyment of the beds and banks of the approximate southern one-third of Coeur d'Alene Lake as well as those portions of the beds and banks of the St. Joe River located within the 1873 Coeur d'Alene Indian Reservation.

(3) Declaring that the defendant has no right to title or otherwise interest in or to the approximate southern one-third of Coeur d'Alene Lake as well as those portions of the bed and banks of the St. Joe River located within the 1873 Coeur d'Alene Indian Reservation.

(4) Preliminarily and permanently enjoining the defendant from asserting any right, title or otherwise interest in or to the beds and banks of the approximate southern one-third of Coeur d'Alene Lake as well as those portions of the and banks of the St. Joe River located within the 1873 Coeur d'Alene Indian Reservation or otherwise interfering in any way with the exclusive possession, use and occupancy of such lands by the United States, the Coeur d'Alene Tribe and its members;

(5) For the costs of this action and for such other relief that the court may deen appropriate.

Done this 19th day of July, 1994.

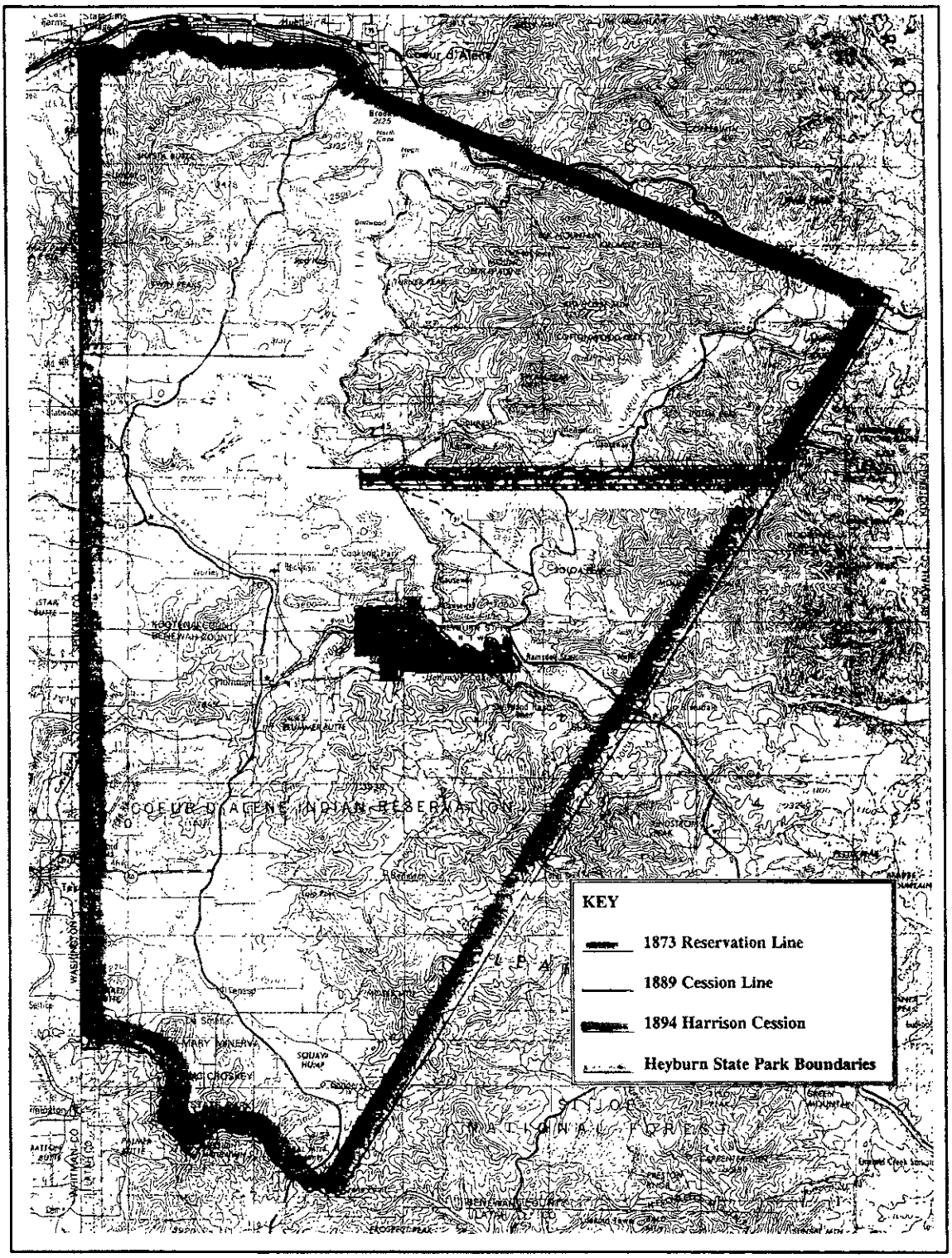
Respectfully submitted,

LOIS SCHIFFER
ACTING ASSISTANT ATTORNEY GENERAL
UNITED STATES DEPARTMENT OF JUSTICE
ENVIRONMENT AND NATURAL RESOURCES
DIVISION

BETTY RICHARDSON
UNITED STATES ATTORNEY
DISTRICT OF IDAHO

Hank Meshorer

HANK MESHORER
CHIEF, INDIAN RESOURCES SECTION
ENVIRONMENT AND NATURAL RESOURCES
DIVISION
UNITED STATES DEPARTMENT OF JUSTICE
P.O. BOX 44378
L'ENFANT PLAZA STATION
WASHINGTON, D.C. 20026-4378
TEL: 202-272-4111
FAX: 202-272-4471




**Map 27**: This map shows Coeur d'Alene Reservation boundary changes that affected ownership of lake and river beds. Map from USGS 1:250,000 Spokane quad.



EXHIBIT 1

# Exhibit 21

to

Affidavit of Steven W. Strack

accompanying

State of Idaho's Memorandum in Support of
Motion for Summary Judgment

CSRBA Consolidated Subcase No. 91-7755

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO



In re suit to quiet title to that portion of the bed and banks of Coeur d'Alene Lake and St. Joe River lying within the exterior boundaries of the 1873 Coeur d'Alene Reservation

Case No. CIV-94-0328-N-EJL

UNITED STATES OF AMERICA,

Plaintiff, Counterdefendant

and

COEUR D'ALENE TRIBE,

Plaintiff in Intervention
Counterdefendant in Intervention

vs.

STATE OF IDAHO,

Defendant, Counterclaimant.

JUDGMENT & DECREE



This action came on for trial before the Court, Honorable Edward J. Lodge, United States District Judge, presiding, from December 1 through December 12, 1997, and the issues having been duly heard and a July 28, 1998, MEMORANDUM DECISION AND ORDER having been duly rendered,

IT IS ORDERED, ADJUDGED AND DECREED that:

1. Title is quieted in favor of the United States, as trustee, and the Coeur d'Alene Tribe, as the beneficially interested party of the trusteeship, to the bed and banks of all of the navigable waters lying within the current boundaries of the Coeur d'Alene Indian Reservation as those boundaries are described by the Act of March 3, 1891, 26 Stat. at 1027 and the Act of August 15, 1894, 28 Stat. at 322, which includes portions of Lake Coeur d'Alene and the St. Joe River, but which exclude those bed and banks of the navigable waters claimed by Idaho to be within Heyburn State Park, which waters and submerged lands were not at issue in this litigation;

2. The United States, as trustee, and the Coeur d'Alene Tribe, as the beneficially interested party of the trusteeship, are entitled to the exclusive use, occupancy and right to the quiet enjoyment of the bed and banks of all of the navigable waters lying within the current boundaries of the Coeur d'Alene Indian Reservation as those boundaries are described by the Act of March 3, 1891, 26 Stat. at 1027 and the Act of August 15, 1894, 28 Stat. at 322, which includes portions of Lake Coeur d'Alene and the St. Joe River, but which exclude those bed and banks of the navigable waters claimed by Idaho to be within Heyburn State Park, which waters and submerged lands were not at issue in this litigation;

3. The State of Idaho is permanently enjoined from asserting any right, title or otherwise interest in or to the bed and banks of all the navigable waters lying within the current boundaries of the Coeur d'Alene Indian Reservation as those boundaries are described by the Act of March 3, 1891, 26 Stat. at 1027 and the Act of August 15, 1894, 28 Stat. at 322, which includes portions of Lake Coeur d'Alene and the St. Joe River, but which exclude those bed and banks of the navigable waters claimed by Idaho to be within Heyburn State Park, which waters and

submerged lands were not at issue in this litigation;

4. The State of Idaho's counterclaim is denied;

5. For such other and further relief in accordance with the aforementioned July 28, 1998, MEMORANDUM DECISION AND ORDER, which by this reference is incorporated herein as if set forth verbatim; and

6. Costs are awarded to the Coeur d'Alene Tribe. By agreement the United States and the State of Idaho shall bear their own costs.

DATED this 14th day of August, 1998.

EDWARD J. LODGE
United States District Judge

# Exhibit 22

to

Affidavit of Steven W. Strack

accompanying

State of Idaho's Memorandum in Support of
Motion for Summary Judgment

CSRBA Consolidated Subcase No. 91-7755

# A History of Coeur d'Alene Tribal Water Use:

# 1780-1915

by

E. Richard Hart

November 25, 2015

the proposed reservation evidences the primary concern of the Tribe for protecting its water resources. The alliance of the Tribe with the Catholics certainly benefitted the Tribe, but the Tribe controlled the content of the 1873 Agreement and the resulting 1873 Executive Order Reservation. In this way the Tribe continued to occupy the heart of its aboriginal territory and achieved the establishment of a reservation with sufficient resources to represent an enduring homeland.

The day after Seltice wrote the letter to Brouillet, it was reported that he met again with members of the commission, who had traveled to the little town of Marcus on the Colville Reservation. The chief of the Lakes Indians reported that Chief Seltice met at a council that also included chiefs from the Spokane, Okanogan, Colville, and other tribes. According to Lakes (Sinixt) Chief James Bernard, the council took place in Marcus, Washington, on August 18, 1873.[229]

The 1873 Executive Order

The 1873 Agreement was not effective until ratified by Congress. However, there was growing concern among federal officials that non-Indians would encroach on the land, rights, and resources set aside in the Agreement before Congress could act. The Commissioner reported that

---

[229] Bernard, James. Deposition, June 23, 1930, enclosed in letter of Harvey E. Meyer to Commissioner of Indian Affairs, June 25, 1930 [cover letter–partly illegible]. MS 194, Robert D. Dellwo Papers, Museum of Arts and Culture; Spokane, Washington, photocopy of National Archives document and labeled "National Archives, Spool 6, Item 10, #56)" [actual citation likely: Record Group 75, Records of the bureau of Indian Affairs, Central Correspondence File 36586-24-260, Colville, Part 1, National Archives]. Transcript by E. Richard Hart. [714]

pending the recommended ratification of that agreement, he was arranging for a new executive order to set aside and protect the land and water described in the agreement, "in order that white persons may be prohibited from settling thereon and claiming compensation for improvements from the Government." This was seen as a temporary measure to fully protect the agreement until the necessary legislation could be passed.[230] The executive order was intended to mirror the agreement signed between the United States and the Coeur d'Alene Tribe and protect the land, rights, and resources set aside in the 1873 Agreement until such time as Congress confirmed the reservation.

The Coeur d'Alene Executive Order was signed by President U. S. Grant on November 8, 1873 (see Appendix and Map 9). The Coeur d'Alene River and Coeur d'Alene Lakes are mentioned as being within the boundaries of the new reservation, and the boundary line is drawn in such a way to indicate that the rivers, lake and other waters were considered part of the reservation.[231]

By 1873 officials representing the United States were fully aware of the extent of Coeur

---

[230] United States. Department of the Interior. Commissioner of Indian Affairs. "Annual Report for 1873," Washington, D. C.: Government Printing Office, pp. 385 and 392. [234]

[231] United States. *Executive Orders Relating to Indian Reservations, From May 14, 1855 to July 1, 1912*, Washington, D. C., Government Printing Office, 1912, p. 72. [275]

Dept. of Interior file notice, November 8, 1873, Letters Received, Washington Superintendency, Microfilm, M 234, Roll 912, RG 75, National Archives. [316]

Royce, Charles C. "Indian Land Cessions in the United States." In *Eighteenth Annual Report of the Bureau of American Ethnology*, Washington, D. C.: Government Printing Office, 1899, pp. 866-869, Plate CXXIII. [151]

# Exhibit 23

to

Affidavit of Steven W. Strack

accompanying

State of Idaho's Memorandum in Support of
Motion for Summary Judgment

CSRBA Consolidated Subcase No. 91-7755

JOHN C. CRUDEN
Assistant Attorney General
VANESSA BOYD WILLARD
Trial Attorney, Indian Resources Section
Environment & Natural Resources Division
U.S. DEPARTMENT OF JUSTICE
999 18th Street, South Terrace, Suite 370
Denver, Colorado 80202
Tel. (303) 844-1353
Fax (303) 844-1350

*Attorneys for the United States*

**IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS**

| | |
|---|---|
| | ) Consolidated Subcase No. 91-7755<br>) (please see attached list of 45 subcases from<br>) the 353 consolidated subcases) |
| **In Re the CSRBA** | ) |
| | ) **UNITED STATES' RESPONSE** |
| **Case No. 49576** | ) **TO STATE OF IDAHO'S FIRST SET** |
| | ) **OF DISCOVERY REQUESTS TO** |
| | ) **CLAIMANT UNITED STATES** |

Pursuant to the Idaho Rules of Civil Procedure and the Court's Scheduling Orders in this Consolidated Subcase, the United States of America ("United States") hereby submits the following responses to *State of Idaho's First Set of Discovery Requests to Claimant United States*. The responses are based upon the best knowledge, information and belief of the United

INTERROGATORY NO. 13: For each reserved water right claim you have made, please identify whether the places) of use is (are):

1) Held by the United States in trust for the Coeur d'Alene Tribe;

2) Held by the United States in trust for one or more individual members of the Coeur d'Alene Tribe;

3) Held in fee simple by the Coeur d'Alene Tribe;

4) Held in fee simple by one or more members of the Coeur d'Alene Tribe;

5) Held in fee simple by a nonmember of the Tribe; or

6) Other (if other, please explain further).

RESPONSE: The United States objects to this interrogatory as seeking excessive sub-parts exceeding the 40 interrogatory limit provided by I.R.C.P. 33(a)(1) and is beyond the scope of I.R.C.P. 26. The United States asserted 353 claims and the place(s) of use could comprise several of the categories listed in Interrogatory 13, resulting in an Interrogatory seeking over 2,000 pieces of information. The United States also objects to this Interrogatory to the extent that it seeks information protected by the joint litigation and common interest privilege between the United States and the Coeur d'Alene Tribe in this adjudication. Without waiver of the foregoing objections, the United States interprets the request to seek the land ownership information that it utilized to develop its claims, therefore, it further answers that GIS data including lands held in trust by the United States (categories 1 & 2 combined) and fee lands owned by the Coeur d'Alene Tribe (category 3) were consulted in developing its claims. Trust lands could also include trust lands held as allotments on behalf of members of other federally recognized Indian Tribes (category 6), but allotments were not separately delineated. The place(s) of use were located on trust or tribal fee lands, but the boundaries of the places of use were not necessarily aligned with the boundaries of the underlying individual parcels of land. Consequently, any place of use in a claim could be entirely within categories 1, 2, 3, or 6; or it could be a combination of these four categories. *See* response to Request for Production No. 4.

INTERROGATORY NO. 14: For all lands identified in your response to Interrogatory No. 13 that are currently held by the United States in trust for the Coeur d'Alene Tribe, or held by the United States in trust for one or more individual members of the Coeur d'Alene Tribe, please indicate whether such lands) ever passed into fee ownership by a nonmember of the Tribe on or after September 9, 1889, but were subsequently reacquired by the United States as trustee for the Coeur d'Alene Tribe or as trustee for one or more members of the Coeur d'Alene Tribe, and for each such individual parcel identify the date such lands passed into fee ownership, the date the lands were reacquired by the United States, and the date the reacquired lands were taken into trust by the United States.

RESPONSE: The United States objects to this interrogatory as seeking excessive sub-parts exceeding the 40 interrogatory limit provided by I.R.C.P. 33(a)(1) and is beyond the scope of I.R.C.P. 26. The United States asserted 353 claims, and the place(s) of use for any claim could comprise several of the categories listed in Interrogatory 13, resulting in an Interrogatory seeking over 2,000 pieces of information. The United States also objects to this interrogatory as unduly burdensome and costly because while the United States may have some of this information in various electronic databases or could research such information in county databases, it has not

assembled the title history of the lands subject to water right claims because it does not view such title history as necessary for its claims as a legal matter. *See* I.R.C.P. (b)(1)(B) (limits on electronically stored information). The United States asserts that the legal issue of priority date should be fully briefed in the summary judgment context before the United States undertakes the time and expense to conduct title searches. Development of this information will require extensive hours and funds, the expenditure of which would not be necessary if the United States' position regarding priority date is adopted by the Court. If the Court rules in a manner that requires title searches for priority date purposes, the United States will complete the necessary work at that time and provide it to the State as a supplemental disclosure. Without waiving the foregoing objections, the United States responds that it did not develop the title analysis required by this request in developing its claims and, therefore, does not have such information readily available.

INTERROGATORY NO. 15: For all lands identified in your response to Interrogatory No. 14, that are currently held in fee simple by the Coeur d'Alene Tribe, please indicate whether such lands) ever passed into fee ownership by a nonmember of the Tribe on or after September 9, 1889, but were subsequently acquired in fee by the Coeur d'Alene Tribe, and for each individual parcel identify the date the lands were acquired in fee by the Coeur d'Alene Tribe.

RESPONSE: The United States objects to the interrogatory as vague because it references the lands identified in Interrogatory 14 (trust lands), but then states that the interrogatory applies to fee lands. The United States will respond to this interrogatory assuming that the State's intention was to ask about fee lands owned by the Tribe. The United States also objects to this interrogatory as seeking excessive sub-parts exceeding the 40 interrogatory limit provided by I.R.C.P. 33(a)(1) and is beyond the scope of I.R.C.P. 26. The United States asserted 353 claims, and the place(s) of use for any claim could comprise several of the categories listed in Interrogatory 13, resulting in an Interrogatory seeking over 1,200 pieces of information. The United States also objects to this interrogatory as unduly burdensome and costly because while the United States may have some of this information in various electronic databases or could research such information in county databases, it has not assembled the title history of the lands subject to water right claims because it does not view such title history as necessary for its claims as a legal matter. *See* I.R.C.P. 26(b)(1)(B) (limits on electronically stored information). The United States asserts that the legal issue of priority date should be fully briefed in the summary judgment context before the United States undertakes the time and expense to conduct title searches. Development of this information will require extensive hours and funds, the expenditure of which would not be necessary if the United States' position regarding priority date is adopted by the Court. If the Court rules in a manner that requires title searches for priority date purposes, the United States will complete the necessary work at that time and provide it to the State as a supplemental disclosure. Without waiving the foregoing objections, the United States responds that it does not possess information responsive to this interrogatory. The United States, through the Bureau of Indian Affairs ("BIA"), records and stores real estate

and land status information only for lands that are held in trust for Tribes or individual tribal members. Accordingly, BIA does not maintain records regarding lands held in fee by the Tribe.

REQUEST FOR [illegible]

REQUEST FOR ADMISSION NO. 37: Please admit that some or all of the place of use for Irrigation Claim No. 91-7778 is also claimed as the place of use for one or more reserved water right claims for "wetlands and/or riparian areas in situ."

RESPONSE: The United States admits this request and states that it is providing separate justifications for the use of the same water by the Tribe.

REQUEST FOR ADMISSION NO. 38: Please admit that some or all of the place of use for Irrigation Claim No. 92-10912 is also claimed as the place of use for one or more reserved water right claims for "wetlands and/or riparian areas in situ."

RESPONSE: The United States admits this request and states that it is providing separate justifications for the use of the same water by the Tribe.

INTERROGATORY NO. 16: Please explain the legal and factual basis for your claim that you are entitled to reserved water rights for both irrigation and wetland purposes for the same place of use.

RESPONSE: The United States objects to this request on the grounds that it calls for a legal conclusion that is outside the scope of discovery allowed under I.R.C.P. 26. Without waiving the foregoing objection, the United States answers that it provided separate justifications for the use of the same water by the Tribe in these overlapping claims. For example, please see the Cover Letter provided with the claims, dated January 30, 2014, which states as follows: "To the extent these claims concern riparian areas along stream subject to Instream Flow claims described in section 2 above, the United States does not intend to double a claim to the same surface water. Instead, the United States is providing two separate justifications for the same water flows that provide instream flows for fish habitat and support riparian vegetation."